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सं. 2] नई दिल्ली, जनवरी 3—जनवरी 9, 2016, शनिवार/पौष 13—पौष 19, 1937
No. 2] NEW DELHI, JANUARY 3—JANUARY 9, 2016, SATURDAY/PAUSA 13—PAUSA 19, 1937

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

गृह मंत्रालय

(भारत के महारजिस्ट्रार का कार्यालय)

नई दिल्ली, 30 जून, 2014

का.आ. 46.—नागरिकता अधिनियम, 1955 (1995 का 57) की धारा 14ए की उप-धारा (4) तथा नागरिकता (नागरिकों का रजिस्ट्रीकरण और राष्ट्रीय पहचान पत्र जारी करना) नियमावली, 2003 की धारा 15 की उप-धारा 2(ए) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्वारा श्री एस. के. चक्रवर्ती, उप महानिदेशक (राष्ट्रीय जनसंख्या रजिस्टर), भारत के महारजिस्ट्रार का कार्यालय को महारजिस्ट्रार, नागरिक, रजिस्ट्रीकरण के इस अधिनियम के अन्तर्गत कार्यों और दायित्वों के निर्वहन में सहायता करने के प्रयोजन के अपर महारजिस्ट्रार, नागरिक रजिस्ट्रीकरण के रूप में नियुक्त करती है।

[सं. 1/5/2014-प्रशा. III]

च. चन्द्रमौलि, भारत के महारजिस्ट्रार एवं जनगणना आयुक्त

MINISTRY OF HOME AFFAIRS

(OFFICE OF THE REGISTRAR GENERAL, INDIA)

New Delhi, the 30th June, 2014

S.O. 46.—In exercise of the powers conferred by Sub-section (4) of Section 14A of the Citizenship Act, 1955 (57 of 1995) and Sub-section 2(a) of Section 15 of the Citizenship (Registration of Citizens and Issue of National Identity Cards), Rules, 2003, the Central Government hereby appoints Shri S. K. Chakrabarti, Deputy Director General (National Population Register) in the office of the Registrar General, India as Additional Registrar General of Citizen Registration for the purpose of assisting the Registrar General of Citizen Registration in discharging his functions and responsibilities under this Act.

[No. 1/5/2014-Admn.-III]

C. CHANDRAMOULI, Registrar-General and
Census Commissioner, India

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 23 दिसम्बर, 2015

का.आ. 47.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हरियाणा राज्य सरकार की अधिसूचना सं. 58/30/15-1 VII दिनांक 22/12/2015 द्वारा प्राप्त सहमति से हरियाणा शहरी विकास प्राधिकरण द्वारा 2011-13 में पंचकुला में औद्योगिक भूखंडों के विज्ञापन एवं एचयूडीए के तत्कालीन अध्यक्ष अथवा उनके नजदीकी जानकारों या मित्रों के रिश्तेदारों को एचयूडीए द्वारा विज्ञापित मानदंड पूरा नहीं करने वाले उन सभी सफल आवेदकों को भाई-भतीजावाद एवं पक्षपात के आधार पर किए गए परवर्ती आवंटन से संबंधित आरोपों, तथा इसी अनुक्रम में 'विधिवत संस्थापित समिति' द्वारा आवंटन नहीं किए जाने और अनियमित प्रक्रियाएं अपनाए जाने संबंधी आरोपों की जांच करने तथा उससे सम्बद्ध अपराधों में किए गए प्रयासों, दुष्प्रेरणों और षडयंत्रों तथा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध या अपराधों की जांच करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त हरियाणा राज्य में करती है।

[फा. सं. 228/62/2015-एवीडी-II]

मो. नदीम, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 23rd December, 2015

S.O. 47.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Haryana vide Notification No. 58/30/15-1 VII, dated 22/12/2015, hereby extends the powers and Jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Haryana for investigation into the allegations regarding advertisement and subsequent allotment of Industrial plots at Panchkula by the Haryana Urban Development Authority in 2011-13 on the basis of nepotism and favouritism to all the successful candidates who did not qualify the criterion advertised by HUDA but happened to be either relatives of the then Chairman HUDA or those of his close associates or friends, and further, the allotments were not made by a 'Duly Constituted Committee' and the procedures adopted were irregular; and attempts, abetments and conspiracies in relation to or in connection with the above mentioned offences and any other offence or offences committed in the course of the same transaction or arising out of the same facts.

[F.No. 228/62/2015-AVD-II]

Md. NADEEM, Under Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 12 नवम्बर, 2015

का.आ. 48.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 6 के उपविनियम (3) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा नीचे अनुसूची में दिए गए उत्पादों की मुहरांकन शुल्क अधिसूचित करता है:

अनुसूची

भारतीय मानक संख्या	भाग	अनु-भाग	वर्ष	उत्पाद	इकाई	न्यूनतम मुहरांकन शुल्क		इकाई दर स्लैब 1 (रु.)	स्लैब में इकाईयां	शेष	प्रचालन तिथि
						बड़े पैमाने पर	छोटे पैमाने पर				
16208	-	-	2015	वस्त्रादि - 10 किग्रा, 15 किग्रा, 20 किग्रा, 25 किग्रा, 30 किग्रा, खाद्यान पैक करने के लिए उच्च घनत्व पोलिइथाइलीन (एच.डी.पी.ई.) / पोलिप्रोपाइलीन (पी.पी.) के बुने हुए बोरे-विशिष्ट	मी. टन	111000.00	88500.00	310.00	सभी	-	28.10.2015

[संदर्भ : सीएमडी-2/16 : 16208]

सी. के. महेश्वरी, वैज्ञानिक 'जी' एवं उपमहानिदेशक (प्रमाणन)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION**(Department of Consumer Affairs)****(BUREAU OF INDIAN STANDARDS)**

New Delhi, the 12th November, 2015

S.O. 48.—In pursuance of sub-regulation (3) of regulation 6 of the Bureau of Indian Standards (Certification) Regulations 1988, the Bureau of Indian Standards, hereby notifies the Marking fee for the products given in the schedule:

SCHEDULE

IS No.	Part	Sec	Year	Product	Unit	Minimum Marking Fee (Rs.)		Unit Rate Slab-1 (Rs.)	Units in Slab-1	Remain- ing	Effective Date
						Large Scale	MSME Units				
16208	-	-	2015	Textiles - High Density Polyethylene (HDPE)/Polypropylene (PP) Woven Sacks for Packaging 10 kg, 15 kg, 20 kg, 25 kg and 30 kg Foodgrains - Specification	1 MT	111000.00	88500.00	310-00	All	-	28.10.2015

[Ref. CMD-2/16 : 16208]

C. K. MAHESHWARI, Sc. 'G' & DDG (Cerification)

वाणिज्य और उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 6 जनवरी, 2016

का.आ. 49.—केन्द्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) नियम, 1964 के नियम 12 के उपनियम (2) के साथ पठित निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स मित्रा एस. के. प्राइवेट लिमिटेड, एस 2-एस 5, सिटी सेंटर, द्वितीय तल, स्वतंत्र पथ, वास्को डी गामा, गोवा - 403802 को इस अधिसूचना, के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए अभिकरण के रूप में भारत सरकार के वाणिज्य मंत्रालय, की अधिसूचना सं. का. आ. 3975, तारीख 20 दिसम्बर, 1965 और की अधिसूचना में उपाबद्ध अनुसूचियों में विनिर्दिष्ट खनिज और अयस्क, ग्रुप-1, अर्थात्, लौह अयस्क के रूप में क्रमशः निर्यात से पूर्व निम्नलिखित शर्तों के अधीन गोवा, में उक्त खनिज और अयस्क के निरीक्षण करने के लिए एक अभिकरण के रूप में मान्यता देती है, अर्थात् :-

(i) मैसर्स मित्रा एस. के. प्राइवेट लिमिटेड, एस 2-एस 5, सिटी सेंटर, द्वितीय तल, स्वतंत्र पथ, वास्को डी गामा, गोवा-403802 खनिज और अयस्क ग्रुप-1 का निर्यात (निरीक्षण) नियम, 1965 के

अधीन उनके द्वारा अपनाई गई निरीक्षण पद्धति की जांच करने के लिए, इस निमित्त निर्यात निरीक्षण परिषद द्वारा नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगी;

(ii) मैसर्स मित्रा एस. के. प्राइवेट लिमिटेड, एस2-एस 5, सिटी सेंटर, द्वितीय तल, स्वतंत्र पथ, वास्को डी गामा, गोवा-403802, इस अधिसूचना के अधीन अपने कृत्यों के पालन में निदेशक (निरीक्षण और क्वालिटी नियंत्रण) निर्यात निरीक्षण परिषद समय-समय पर लिखित में दिए गए ऐसे निर्देशों से आबद्ध होंगे।

[फा. सं. 4/5/15-निर्यात निरीक्षण]

संतोष कुमार सारंगी, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY**(Department of Commerce)**

New Delhi, the 6th January, 2016

S.O. 49.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognizes M/s. Mitra S.K Pvt. Ltd., S2-S 5, Citi Centre, 2nd Floor, Swatantra Path, Vasco Da Gama, Goa- 403802, as an agency for a period of three years, for inspection of Minerals and Ores (Group-I), namely, Iron Ore, specified in the Schedule annexed to the notification of the

Government of India in the Ministry of Commerce *vide* number S.O. 3975, dated the 20th December 1965, prior to export of the said Minerals and Ores at Goa subject to the following conditions, namely: -

- (i) that M/s. Mitra S.K Pvt Ltd., S2-S 5, Citi Centre, 2nd Floor, Swatantra Path, Vasco Da Gama, Goa-403802 shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by them in carrying out the inspection under rule 4 of the Export of Minerals and Ores, Group-I (Inspection) Rules, 1965 and;
- (ii) that M/s. Mitra S.K Pvt Ltd., S2-S 5, Citi Centre, 2nd Floor, Swatantra Path, Vasco Da Gama, Goa-403802, in the performance of their function under this notification shall be bound by such directions as the Director (Inspection and Quality Control), Export Inspection Council may give in writing from time to time.

[No. 4/5/2015-Export Inspection]
SANTOSH KUMAR SARANGI, Jt. Secy.

नई दिल्ली, 6 जनवरी, 2016

का.आ. 50.—केन्द्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) नियम, 1964 के नियम 12, के उपनियम (II) के साथ पठित निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स ईटालैब (गोवा) प्राइवेट लिमिटेड, ईटालैब हाउस, फाउंडेकर बिल्डिंग, कामिलैट मठ के विपरीत, अपोलो विक्टर अस्पताल रोड, मालभात, मडगांव, गोवा, को इस अधिसूचना, के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए भारत सरकार के वाणिज्य मंत्रालय, की अधिसूचना सं. का.आ. 3975 तारीख 20 दिसम्बर, 1965 की अधिसूचना में उपाबद्ध अनुसूचियों में विनिर्दिष्ट खनिज और अयस्क, समूह-1, अर्थात्, लौह अयस्क, मैंगनीज अयस्क, फेरो मैंगनीज और बॉक्साइट, को निर्यात से पूर्व निम्नलिखित शर्तों के अधीन गोवा, में उक्त खनिज और अयस्क के निरीक्षण करने के लिए एक अधिकरण के रूप में मान्यता देती है, अर्थात् :-

(i) मैसर्स ईटालैब (गोवा) प्राइवेट लिमिटेड, ईटालैब हाउस, फाउंडेकर बिल्डिंग, कामिलैट मठ के विपरीत, अपोलो विक्टर अस्पताल रोड, मालभात, मडगांव, गोवा, खनिज और अयस्क ग्रुप-1 का निर्यात (निरीक्षण) नियम, 1965 का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन उनके द्वारा अपनाई गई निरीक्षण की पद्धति की जांच करने के लिए, इस निमित्त निर्यात निरीक्षण परिषद द्वारा नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगी; और

(ii) मैसर्स ईटालैब (गोवा) प्राइवेट लिमिटेड, ईटालैब हाउस, फाउंडेकर बिल्डिंग, कामिलैट मठ के विपरीत, अपोलो विक्टर अस्पताल रोड, मालभात, मडगांव, गोवा, इस अधिसूचना के अधीन अपने कृत्यों के पालन में निदेशक (निरीक्षण और क्वालिटी नियंत्रण)

निर्यात निरीक्षण परिषद समय-समय पर लिखित में दिए गए ऐसे निर्देशों से आबद्ध होंगे।

[फा. सं. 4/6/15-निर्यात निरीक्षण]
संतोष कुमार सारंगी, संयुक्त सचिव

New Delhi, the 6th January, 2016

S.O. 50.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognizes M/s. Italab (Goa) Pvt. Ltd, Italab House, Fondekar Building, Opposite Carmelite Monastery, Apollo Victor Hospital Road, Malbhat, Margoa, Goa, as an agency for a period of three years, from the date of publication of this notification in the official Gazette, for inspection of Minerals and Ores (Group-I), namely, iron ore, manganese ore, ferromanganese and bauxite, specified in the schedule annexed to the notification of the Government of India in the Ministry of Commerce *vide* number S.O. 3975, dated the 20th December, 1965, prior to export of the said Minerals and Ores at Goa subject to the following conditions, namely :-

- (i) M/s. Italab (Goa) Pvt. Ltd, Italab House, Fondekar Building, Opposite Carmelite Monastery, Apollo Victor Hospital Road, Malbhat, Margoa, Goa, shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by them in carrying out the inspection under rule 4 of the Export of Minerals and Ores, Group-I (Inspection) Rules, 1965 and;
- (ii) M/s Italab (Goa) Pvt. Ltd, Italab House, Fondekar Building, Opposite Carmelite Monastery, Apollo Victor Hospital Road, Malbhat, Margoa, Goa, in the performance of their function under this notification shall be bound by such directions as the Director (Inspection and Quality Control), Export Inspection Council may give in writing from time to time.

[F. No. 4/6/15-Export Inspection]
SANTOSH KUMAR SARANGI, Jt. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 30 दिसम्बर, 2015

का.आ. 51.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार साबरमती होस्टल, मेस डिपार्टमेंट जे.एन.यू. एण्ड अदर्स के प्रबंधन के संबंध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ सं. 24/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 22/12/2015 को प्राप्त हुआ था।

[सं. एल-42025/03/2015-आईआर (डीयू)]
पी. के. वेणुगोपाल, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 30th December, 2015

S.O. 51.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 24/2014) of the Central Government Industrial Tribunal-Cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Sabarmati Hostel, Mess Department in JNU & Others and their workmen, which was received by the Central Government on 22/12/2015.

[No. L-42025/03/2015-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
NO. 1, KARKARDOOMA COURT COMPLEX, DELHI**

ID No. 24/2014

Shri Ashok Kumar,
S/o Shri Bhalle Ram,
A-59, Roshan Vihar Part 2,
Pole No. 902, Najafgarh,
New Delhi

C/o Hindustan Engineering
and General Mazdoor Union,
D-2/24 Sultanpuri,
New Delhi-110086

...Workman

Versus

1. Senior Warden,
M/s. Sabarmati Hostel,
Mess Department in Jawaharlal Nehru University,
New Delhi-110067
2. Manager, M/s. Jai Balaji Security Services (Regd.)
102, Shivlok House - 1 Karampura,
New Delhi-110015

...Management

AWARD

Shri Ashok Kumar was working as Head Security Guard/Incharge with Mess Department with Jawaharlal Nehru University on the instructions of M/s. Jai Balaji Security Service Regd. Attendance was being marked by Jawaharlal Nehru University whereas M/s. Jai Balaji Security Services Regd, was paying his wages. His services were dispensed with by the management on 24.12.2012. He served a legal notice of demand for payment of back wages, PF, Bonus, compensation etc. His demand was not conceded to by the management. Constrained by these circumstances, he raised a dispute before the Conciliation Officer. Since his claim was contested by the management,

conciliation proceedings ended into a failure. Since 45 days from the date of moving an application before the Conciliation Officer expired, Shri Ashok Kumar opted to file his dispute before the Tribunal using provisions of Sub-section (2) of section 2A of the Industrial Disputes Act, 1947 (in short the Act), without being referred for adjudication by the appropriate Government under section 10(1)(d) of the Act.

2. Managements were called upon to file their written statement. Management No. 2 files their written statement. But despite, service of notice, management No. 1 failed to put in its appearance. Hence, management No. 1 was proceeded ex-parte and the case was listed for consideration on maintainability of application.

3. Management No. 2, in their written statement averred that the claim is ill conceived/misconceived and no cause of action has accrued to the claimant to file the claim against them as the claimant was not in their employment on 24.04.2012, i.e. the date of his termination. Claimant was in the employment of Management No. 2 from 01.02.2010 till November 2011 with intermittent breaks. He left services on his own and started working with Management No. 1 as its employee. Hence, they are not a necessary party to the dispute. The claim is also bad in law because of misjoinder of parties. It is also averred that it is not an industrial dispute, claimant is not a workman and that this Tribunal lacks jurisdiction to adjudicate this case. Finally, it has been prayed that the claim may be dismissed.

4. Thereafter the case was listed for rejoinder, admission/denial of documents and for framing of issues. In the meanwhile, Shri Rajiv Gupta, learned authorized representative for M/s. Jai Balaji Security Services stated that the management No. 2 is ready and willing to pay an amount of Rs. 22,000.00 and Jawaharlal Nehru University Management No. 1 is also willing to pay an amount of Rs. 38,384.00 by way of cheque as full and final settlement of the claim of the claimant.

5. Claimant made a statement to the effect that he was willing to accept Rs. 38,384.00 from Management No. 1 and Rs. 22,000.00 from Management No. 2, thus totalling Rs. 60,384.00. Thus, on payment of a sum of Rs. 60,384.00, claim made would stand satisfied. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : December 21, 2015

A. C. DOGRA, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2015

का.आ. 52.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मिनिस्ट्री ऑफ हेल्थ एण्ड फैमिली वेलफेयर एण्ड अदर्स के प्रबंधतंत्र के संबंधित नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ सं. 73/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 22/12/2015 को प्राप्त हुआ था।

[सं. एल-42011/156/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 30th December, 2015

S.O. 52.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 73/2015) of the Central Government Industrial Tribunal-Cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Ministry of Health and Family Welfare & Others and their workmen, which was received by the Central Government on 22/12/2015.

[No. L-42011/156/2014-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
NO.1, KARKARDOOMA COURT COMPLEX, DELHI**

ID No.73/2015

Shri Sankar Lal, S/o Shri Jumman Lal,

C/o All India General Mazdoor Trade Union (ATUC)

170, Bal Kukund Khand, Giri Nagar,

Kalkaji, New Delhi-110 019

.....Workman

Versus

1. The Medical Superintendent,
Ministry of Health and Family Welfare,
Safdarjung Hospital,
New Delhi-110 029
 2. M/s BVG India Ltd. (Contractor),
M/s BVG India Ltd.,
106, Mercantile House, 1st Floor,
16, K.G Marg,
New Delhi-110 001
- ...Managements

AWARD

Central Government, vide letter No.L-42011/156/2014-IR(DU) dated 04.02.2015, referred the following industrial dispute to this Tribunal for adjudication:

“Is any wage due to the employee? and is the employee entitled to reinstatement in service of the employer M/s. BVF India Ltd.?”

2. In the reference order, the appropriate Government commanded the party raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, the claimant opted not to file his claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the claimant as well as the management. Neither the postal article, referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite sending notice by registered A.D., neither the claimant nor any authorized representative on his behalf appeared before the Tribunal so as to pursue his case. Thus, it is clear that the claimant is not interested in adjudication of the reference on merits.

4. Since the claimant has neither filed his statement of claim nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : December 14, 2015

A.C. DOGRA, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2015

का.आ. 53.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नोर्थ दिल्ली म्युनिसिपल कार्पोरेशन के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ सं. 72/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 22/12/2015 को प्राप्त हुआ था।

[सं. एल-42011/159/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 30th December, 2015

S.O. 53.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 72/2015) of the Central Government Industrial Tribunal-Cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the North Delhi Municipal Corporation and their workmen, which was received by the Central Government on 22/12/2015.

[No. L-42011/159/2014-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
NO.1, KARKARDOOMA COURT COMPLEX, DELHI**

ID No.72/2015

Shri Dharam Pal, S/o Shri Mahaveer Singh,
C/o Delhi Udhiyan Karamchari Sangharsh Union,
B-5, Ram Gali, North Ghonda,
New Delhi-110053Workman

Versus

The Commissioner,
North Delhi Municipal Corporation,
9th Floor, Civic Centre, Minto Road,
New Delhi – 110 002 ...Managements

AWARD

Central Government, vide letter No.L-42011/159/2014-IR(DU) dated 04.02.2015, referred the following industrial dispute to this Tribunal for adjudication:

“Whether non-regularization of services of the workman Shri Dharam Pal S/o Shri Mahaveer Singh in the establishment of North Delhi Municipal Corporation on the post of mate with effect from 01.04.2006 is just, fair & legal? If not, what relief the workman is entitled to?

2. In the reference order, the appropriate Government commanded the party raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, the claimant opted not to file his claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the claimant as well as the management. Neither the postal article, referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite sending notice by registered A.D., neither the claimant nor any authorized representative on his behalf appeared before the Tribunal so as to pursue his case. Thus, it is clear that the claimant is not interested in adjudication of the reference on merits.

4. Since the claimant has neither filed his statement of claim nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate

Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : December 14, 2015

A.C. DOGRA, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2015

का.आ. 54.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दिल्ली डेवलपमेंट अथॉरिटी एण्ड अदर्स के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ सं. 37/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 22/12/2015 को प्राप्त हुआ था।

[सं. एल-42012/182/2014-आईआर (डीयू)]
पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 30th December, 2015

S.O. 54.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 37/2015) of the Central Government Industrial Tribunal-Cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Delhi Development Authority & others and their workmen, which was received by the Central Government on 22/12/2015.

[No.L-42011/182/2014-IR(DU)]
P. K. VENUGOPAL, Desk Officer

ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
NO.1, KARKARDOOMA COURT COMPLEX, DELHI**

ID No. 37/2015

Shri Kishori Sriwas, S/o Shri Durga Prasad Sriwas,
C/o 1800/9, Govindpuri Extension,
Main Road, Kalkaji,
New Delhi-110019Workman

Versus

1. The Secretary,
Delhi Development Authority
Siri Fort Sports Complex,
August Kranti Marg,
Khel Gaon,
New Delhi-110049
2. M/s International (Ex-Servicemen) Security
Service, A/3B, Janta (near Central School),
Tagore Garden Extension,
New Delhi-110027 ...Managements

AWARD

Central Government, vide letter No.L-42012/182/2014-IR(DU) dated 12.01.2015, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of International (Ex-Servicemen) Security Services, Contractor in terminating the services of the workman Shri Kishori Sriwas with effect from 01.05.2013 can be construed as termination of employment by DDA presuming the entity of contractor as sham and camouflage? If not, what relief the workman concerned is entitled to?

2. In the reference order, the appropriate Government commanded the party raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, the claimant opted not to file his claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the claimant as well as the management. Neither the postal article, referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite sending notice by registered A.D., neither the claimant nor any authorized representative on his behalf appeared before the Tribunal so as to pursue his case. Thus, it is clear that the claimant is not interested in adjudication of the reference on merits.

4. Since the claimant has neither filed his statement of claim nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : December 14, 2015

A.C. DOGRA, Presiding Officer

नई दिल्ली, 31 दिसम्बर, 2015

का.आ. 55.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केन्द्रीय विद्यालय, नैनीताल के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 04/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 30/12/2015 को प्राप्त हुआ था।

[सं. एल-42012/79/2006-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 31st December, 2015

S.O. 55.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I. D No. 04/2007) of the Central Government Industrial Tribunal-Cum-Labour Court Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Kendriya Vidyalaya, Nainital and their workman, which was received by the Central Government on 30/12/2015.

[No. L-42012/79/2006-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT, LUCKNOW**

PRESENT :

RAKESH KUMAR, Presiding Officer

I.D. No. 04/2007

Ref.No. L-42012/79/2006-IR(DU) dated 31.01.2007

BETWEEN

Sri Rajendra Singh S/o Late Raghu
Ward No.4, Rajendra Walmiki Colony,
Haldwani
Nainital

AND

The Principal
Kendriya Vidyalaya
Military Area, PO Bhotia Parao
Nainital

AWARD

1. By order No. L-42012/79/2006-IR(DU) dated 31.01.2007 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Rajendra Singh S/o Late Raghu, Nainital and the Principal, Kendriya Vidyalaya, Nainital for adjudication.

2. The reference under adjudication is:

“WHETHER THE ACTION OF THE MANAGEMENT OF PRINCIPAL, KENDRIYA VIDHYALAYA, HALDWANI IN TERMINATING THE SERVICE OF THEIR WORKMAN SRI RAJENDRA SINGH W.E.F. 03.12.2005 IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE WORKMAN IS ENTITLED TO?”

3. The workman, has stated in brief in claim statement A-I that he was appointed as Class IV employee on daily wages basis on 10.06.2002, he has performed his duties

continuously till the oral termination by the opposite party. Certain photo copies of certificate issued by Principal of Kendriya Vidyalaya have been annexed by the workman. The workman has pleaded that he was appointed through proper channel on vacant post and duty performed was permanent in nature, and he received wages on daily wages. He had worked for more than 240 days continuously in each calander year, photo copy of identity card has been filed.

4. The workman has further stated that his work and conduct was found to be satisfactory during the service tenure, there was no complaint regarding his work, no warning was ever issued to him, therefore in such condition without any notice or payment in lieu of notice or compensation, the opposite party without any valid reason orally debarred him from work or terminated his services w.e.f. 03.12.2005, violative of mandatory provisions of I.D. Act. The workman has asserted that representation dated 19.12.2005 was sent through registered post to the opposite party with the request to reinstate him in service, but no response was given. Photo copy of the representation has been filed.

5. It has further been pleaded that the workman having no other alternative, he had to file petition before the Conciliation Officer; on failure of conciliation proceedings the matter has been referred for adjudication to this Tribunal. The workman has emphasized that since there was vacant post of permanent nature of job, he was one of the employees who had performed his duties, he has got status of priority, and has got statutory right under the provision of I.D. Act, even then opposite party without any notice and without any due approval, has terminated the services of the workman and opposite party has employed another person in illegal manner through mediator. The workman has pleaded that he has no other source of income and he could not get any other job despite his best efforts, the opposite party with malice and bias intention has adopted new procedure, and appointed new persons in place of the workman, unfair labour practice has been adopted and his services has been terminated illegally and in an arbitrary manner. The workman has prayed to set aside the oral termination order dated 03.12.2005 and to reinstate him with full back wages and other consequential benefits etc.

6. The management has filed written statement A-10 wherein the allegations of the claim statement have been denied. The management has stated that the workman was not appointed at all, it has also been specifically denied that in any calander year the workman had worked for 240 days, so called annexure filed by the workman has been denied by the opposite party. The violation of I.D. Act, or any other provision has been denied by the opposite party. The management has also stated that there was no need to reply the said letter dated 19.12.2005.

7. The opposite party has further stated that daily wager has no statutory right under I.D. Act, or other prevailing laws, there was no vacant post and there is no provision of status of priority, therefore, there was no need to give any notice, to discontinue the engagement of daily wage earner. The management has emphasized that the employment of Group "D" for Gardner, Security and Cleanliness is done by Privatization, and the same is not illegal. The opposite party has stated that it has no malice against the workman. No new procedure was adopted nor any new person appointed in place of the workman. It has also been pleaded by the management that no unfair labour practice was adopted nor any illegality was there in disengaging the workman concerned, there was no appointment, nor any appointment letter was ever issued to the workman.

8. The management has stated that the workman was being engaged on day to day basis and was paid his daily wages from Vidyalaya Vikas Nidhi and not out of Kendriya Vidyalaya Sangathan School fund (Govt. Grants), because only regular employees are paid out of Govt. Grant. The opposite party has further stated that the Principal has no authority to employ anyone as Group "D" (Class IV) on regular basis and the demand of worker was illegal from very beginning.

9. The Kendriya Vidyalaya Sangathan has an office memorandum dt. 10.12.2000 whereby Schools were allowed to engage the services of private agencies in the manner indicated by Authorities for the task of (a) watch & ward: (b) Cleaning of schools (c) Proper maintenance of gardens Lawns etc. The contention of the worker that he was given employment against a vacant post is false. The workman was casual labour who worked on different jobs. The Principal is authorized to engage Casual Labour with the approval of V.M.C. (Vidyalaya Management Committee).

10. With the above pleadings the management has requested to dismiss the petition filed by the workman. Copy of the office memo dt. 10.12.2000 and several other documents have been filed by the management along with written statement.

11. Rejoinder W-11 has been filed by the workman with the denial of the allegations levelled in the written statement, while reiterating plea taken in the claim statement. It has also been pleaded by the workman that the working days shown by the opposite party do not include weekly holidays and festival holidays. The workman has pleaded that Hon'ble High Court Uttranchal, Nainital had observed that if any workman has worked for 90 days in a month, 17 paid holidays and 52 Sundays will also be included in the period of working days. The workman has again prayed for his reinstatement along with full back wages with continuity in service.

12. The workman Rajendra Singh has filed affidavit W-31 in evidence. He has been cross examined on behalf

of the management. The management has adduced affidavit M-37 of Sri Puran Chandra Pandey in support of the written statement. Affidavit M-39 of Sri Chandan Singh Pilakhwal, Vice Principal of Kendriya Vidyalaya has been filed by the management and he has been cross examined on behalf of the workman.

13. Learned AR of the workman has cited following ruling of the Hon'ble High Court :

- (1) 2003(99) FLR 331 UPDPL and Ramanuj Yadav & others
- (2) FLR 53 1986 S. Govindaraju and KSRTC and another
- (3) 2006 (4) SLR Chief Engineer, Ranjit Sagar Dam vs Sham Lal
- (4) 2008 (116) FLR 1046 Union of India and PO, CGIT, Kanpur
- (5) 2014 (142) FLR 20 Bhuvanesh Kumar Dwivedi and Hindalco Industries Ltd.

14. Learned AR of the management has cited following ruling of the Hon'ble Supreme Court;

- (1) AIR 2002 Supreme Court 1295 Kendriya Vidyalaya Sangathan vs Subhash Sharma etc.

15. Arguments of both the parties have been heard at length. Record has been perused thoroughly.

16. Learned AR for the workman has emphasized that the workman, appointed earlier on daily wage basis as a class IV employee on 10.06.2002, has been very sincere and honest towards his duties, he had worked for more than 240 days continuously in each calander year, even then violating the principle of natural justice and mandatory provision of I.D. Act, the management has terminated the services of the workman by an oral order. The management, while denying the allegations levelled by the workman, has asserted that the daily wagger has got no statutory right under the I.D. Act or any other prevailing law, there was no vacant post, neither there was any malice against the workman, he was not a regular employee, the workman was engaged as casual labour and he had worked on different jobs. There was no illegality in disengaging him since there was no occasion or reason for his further engagement. The management has relied upon AIR 2002 Supreme Court 1295 Kendriya Vidyalaya Sangathan vs Subhash Sharma; although the pronouncement of Hon'ble Apex Court in the case is agreed upon but its applicability shall depend upon the fact and circumstances of the case.

17. The workman Rajendra Singh, has filed an affidavit W-31, in his cross examination dated 09.01.2014, before my learned predecessor/Hon'ble Judge, the workman has stated that no appointment letter was issued,

he was appointed on daily wages but payment was made to him monthwise, he was not paid for Sunday and other holidays, he was not appointed through any agency, rather he was directly summoned by the then Principal. On last page of the cross examination the workman has stated that through an agency he had worked for about a month as gardner, engagement through agency was initiated in the year 2005, not in the year 2002.

18. Mr. Chandan Singh the then Vice Principal of the Kendriya Vidyalaya was cross examined before my learned predecessor/Hon'ble Judge on 24.04.2014, wherein he has admitted that the details regarding the work done by the applicant from 10.06.2002 to 02.12.2005, have been filed along with written statement and a notice dated 19.12.2005 regarding termination of services has also been filed. The witness has also asserted that there is no provision for retrenchment compensation or prior notice for daily wagger. On page two of the cross examination the witness has mentioned that in other cases persons were employed through contractor but there was no control over person being appointed by the said contractor. The Vice Principal on being asked, has mentioned that there was no charge against the workman, and the payment was made to the labourers through contractor as per the directions of the Labour Department. It has also been admitted that after termination of service of the workman, through a contractor work for cleaning etc. is being taken, and services of the applicant workman were terminated on the orders of the Principal.

19. Having regard to the rival pleadings of the case, evidence adduced by the parties, documentary as well as oral and arguments forwarded by the learned authorized representatives of the parties, it comes out that it is the case of the parties that the workman, Rajendera Singh had been engaged by the opposite parties as casual labourer as and when required and was paid on daily wage basis. The case of the management in this regard is that the engagement of the workman was made by the Principal of the institution, who is not authorized to do so in view of the Office Memorandum No. F.12-13/99-KVS (Admn.I) dated 2000. Further, the authorized representative of the workman has emphasized that he worked for more than 240 days in preceding twelve calendar months and was entitled for compliance of mandatory provisions of Section 25 F of the Act prior to his retrenchment. The authorized representative of the management has denied continuous working of the workman in any calendar year. Thus, the whole case rests on the pivot regarding compliance of mandatory provision of Section 25 F of the Act.

20. In *Surenderanagar Panchayat and another v. Jethabhai Pitamberbhai* 2005 (107) FLR 1145 (SC) Hon'ble Apex Court came to the conclusion that the workman could be entitled for the protection of section 25-F of the Industrial Disputes Act, 1947 provided he is

successful in establishing the fact that he had been in employment with the employer for a period of 240 days uninterruptedly in twelve calendar months preceding the date of termination. It was held by the Hon'ble Supreme Court that in such cases, the scope of the enquiry before the Labour Court was confined only to 12 months preceding the date of termination to decide the question of the continuous service for the purpose of section 25-F of the Industrial Disputes Act, 1947.

Thus, in view of the pronouncement of the Hon'ble Apex Court in Surenderanagar Panchayat case (supra), the period of inquiry before this Tribunal during twelve calendar months preceding the date of alleged termination on 03.12.2005 i.e. from 02.12.2004 to 03.12.2005. From perusal of the records it is evident that in order to prove, continuous 240 days working with the management, the workman has filed photocopy of a working certificate and his identity card which has specifically been denied by the management in its written statement. However, the management has filed statement of working days of the workman as casual labour in Kendriya Vidyalaya, Haldwani, paper No. 10/6 to 10/11, which bears his working details w.e.f. 10.06.2002 to 03.12.2005. On scrutinizing the working details of the workman from 02.12.2004 to 03.12.2005, from the documents filed by the management it comes as under:

Month/Year	From	To	No. of days
Dec. 04	01.12.04	04.12.04	03
	06.12.04	10.12.04	05
	13.02.04	18.12.04	06
	20.12.04	21.12.04	12
Jan. 05	01.01.05	-	1
	03.01.05	07.1.05	5
	10.1.05	13.1.05	4
	15.1.05	-	1
	17.10.05	20.1.05	4
	22.1.05	-	1
	24.1.05	29.1.05	6
	31.1.05	-	1
Feb. 05	01.2.05	05.2.05	5
	07.2.05	11.2.05	5
	14.2.05	19.2.05	6
	21.2.05	26.2.05	6
	28.2.05	-	1
March, 05	01.3.05	04.3.05	4
	07.3.05	-	1
	09.3.05	11.3.05	3
	14.3.05	19.3.05	6
	21.3.05	24.3.05	4
	28.3.05	31.3.05	4
April, 05	01.4.05	02.4.05	2
	04.6.05	08.4.05	5

	11.4.05	13.4.05	3
	15.04.05	16.4.05	2
	19.04.05	21.4.05	3
	23.04.05	-	1
	25.04.05	30.4.05	6
May, 05	02.5.05	07.05.05	6
June, 05	13.6.05	10.6.05	6
	20.6.05	30.6.05	11
July, 05	01.7.05	02.7.05	2
	04.7.05	08.7.05	5
	11.7.05	23.7.05	13
	25.7.05	31.7.05	7
Aug, 05	01.8.05	06.8.05	6
	08.8.05	12.8.05	5
	15.8.05	18.8.05	4
	20.8.05	-	1
	22.8.05	25.8.05	4
	29.8.05	31.8.05	3
Sept. 05	01.9.05	03.9.05	3
	05.9.05	19.9.05	13
	19.9.05	24.9.05	6
	26.9.05	30.9.05	5
Oct. 05	01.10.05	-	1
	03.10.05	06.10.05	4
	17.10.05	22.10.05	6
	24.10.05	29.10.05	6
Nov. 05	04.11.05	05.11.05	2
	07.11.05	11.11.05	5
	14.11.05	-	1
	16.11.05	19.11.05	4
	21.11.05	26.11.05	6
Dec. 05	28.11.05	30.11.05	3
	1.12.05	3.12.05	3
Total			260

Thus, from above working details, filed by the management itself along with its written statement and part of the affidavit of the management witness viz. Shri Chandan Singh Pilkhwai, Vice Principal vide para 06 of his affidavit it is established that the working of the workman with the management of the Kendriya Vidyalaya was for 260 days during the twelve preceding month from the date of his alleged termination on 03.12.2005 i.e. during the period 02.12.2004 to 03.12.2005; and no notice or notice pay in lieu thereof or retrenchment compensation had been paid to the workman.

21. Hon'ble Allahabad High Court in *State of U.P. vs. Mahendra Pal Singh & another* 2012 (2) ALJ 325 while scrutinizing the validity of the award of the Labour Court found that the findings of the Labour Court were not perverse; wherein the Labour Court drawn out a finding that the workman had continuously worked for more than

240 days in calendar months prior to termination of his services; and the termination of services was without any notice and without payment of retrenchment compensation; and accordingly, Hon'ble High Court held that the relief of reinstatement with 60% of back wages, awarded by the Labour Court was justified. Hon'ble High Court in para 47-50 of its judgment, has referred decision of Hon'ble Apex Court in *Krishan Singh Vs. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana) (2010) 3 SCC 637: (AIR 2010 SC (Supp) 787* as under:

“47. the appellant worked as a daily wager under the respondent from 1.6.1988. His services were terminated in December, 1993. He served a notice of demand dated 30.12.1997 on the respondent contended that his services were terminated orally without complying with the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and that he may be reinstated in service with full back wages from the date of illegal termination and he may be regularized according to the Government policy. The respondent did not respond to the demand made by the appellant and by an order dated 23.7.1999, the State Government referred the dispute under Section 10 of the Act to the Labour Court. Thereupon the Labour Court passed the award dated 18.7.2006 holding that the appellant had admittedly completed 267 days from 1.6.1988 to 30th April, 1989 and his services were terminated without any notice or notice pay and without payment of retrenchment compensation and the termination was, therefore, in violation of Section 25-F of the Act and the appellant was entitled to be reinstated in his previous post with continuity of service and 50% back wages from the date of demand notice i.e. 30.12.1997.

*48. The respondent challenged the award of the Labour Court before the High Court of Punjab and Haryana, in writ petition and by order dated 9.12.2008, High Court allowed the said writ petition and set aside the award dated 18.7.2006 of the Labour Court and directed the respondent instead to pay compensation of Rs. 50,000/- to the appellant. Aggrieved by order dated 9.12.2008 of the High Court, the appellant filed appeal before the Apex Court. By placing reliance upon earlier decision rendered by the Apex Court in the case of *Harjinder Singh (supra)*, allowed the appeal and set aside the impugned order dated 9.12.2008 passed by the High Court and directed that the appellant will be reinstated as a daily wager with 50% back wages forthwith.*

49. While dealing with the question of discretionary powers of the Labour Court, in para 17 of the decision, Hon'ble Apex Court has observed as under:

“17. Wide discretion is, therefore, vested in the Labour Court while adjudicating an industrial dispute relating to the discharge or dismissal of a workman and if the Labour Court has exercised its jurisdiction in the facts and circumstances of the case to direct reinstatement of a workman with 50% back wages taking into consideration the pleadings of the parties and the evidence on record, the High Court in exercise of its power under Articles 226 and 227 of the Constitution of India will not interfere with the same, except on well settled principles laid down by this Court for a writ of certiorari against an order passed by a court or a tribunal.”

50. In the said case while drawing distinction between the cases of this nature and *State of Karnataka vs. Umadevi (2006) 4 SCC 1 : (AIR 2006 SC 1806 SC 1806)* in para 22 of the said decision Hon'ble Apex Court held as under:

22. The decision of this Court in State of Karnataka v. Umadevi (3) cited by the counsel for the respondent relates to regularization in public employment and has no relevance to an award for reinstatement of a discharged workman passed by the Labour Court under Section 11-A of the Act without any direction for regularization of his services.”

Moreover, Hon'ble Apex Court in *Bhuvanesh Kumar Dwivedi vs M/s. Hindalco Industries Ltd. 2014(142) FLR 20*; wherein it awarded reinstatement with full back wages to the appellant while dealing with the case of alleged contravention of Section 6-N of the U.P. I.D. Act which is in similar to Section 25 F of the I.D. Act has observed as under:

“28. Section 6-N of the U.P. I.D. Act which is in pari materia to s. 25 of the I.D. Act reads thus:

“6-N. Condition precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until, -

(a)

(b)

(c)

Evidently, the above said mandatory procedure has not been followed in the present case. Further, it has been held by this Court in the case of Anoop Sharma vs. Executive Engineer, Public Health Division No. 1, Panipat, as under:

13.....no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of the section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. This Court has repeatedly held that section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity..... This Court has used different expressions for describing the consequences of terminating a workman's service/employment/engagement by way of retrenchment without complying with the mandate of section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of section 25-F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated."

Therefore, in the light of the law provided in the I.D. Act and its State counterpart through the U.P.I.D. Act and also on the basis of the legal principle laid down by this Court, we hold that the termination of services of the appellant was illegal and void ab initio.

29. Therefore, in the Labour Court was correct on factual evidence on record and legal principles laid down by this Court in catena of cases in holding that the appellant is entitled to reinstatement with all consequential benefits."

22. Thus, in view of the facts and circumstances of the case, discussions made hereinabove and law relied on, it is established that the workman, Rajendra Singh, who was engaged as casual labour by the management of Kendriya Vidhyalaya had worked for 260 days in twelve calendar months preceding the date of his termination and his services have been illegally terminated on 03.12.2005 by the management of the Kendriya Vidhyalaya, Haldwani without following the mandatory provisions of the Section 25 F of the Industrial Disputes Act, 1947. Therefore, I am

of the considered opinion that the workman, Rajendra Singh is entitled for reinstatement with continuity in service along & full back wages within 08 weeks of publication of the award, failing which; the back wages shall carry simple interest @ 6% per annum.

17. The reference is answered accordingly.

Lucknow RAKESH KUMAR, Presiding Officer
17th December, 2015

नई दिल्ली, 8 जनवरी, 2016

का.आ. 56.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स ऑयल इंडिया लिमिटेड (पाइपलाइन डिविजन) के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ सं. 08/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 05/01/2016 को प्राप्त हुआ था।

[सं. एल-30011/41/2013-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 8th January, 2016

S.O. 56.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 08/2014) of the Central Government Industrial Tribunal/Labour Court, Guwahati now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Oil India Ltd. (Pipeline Division) and their workman, which was received by the Central Government on 05/01/2016.

[No. L-30011/41/2013-IR(M)]
NAVEEN KAPOOR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, GUWAHATI, ASSAM

Present: Shri L.C. Dey, M.A., LL.B.

Presiding Officer,
CGIT-cum-Labour Court, Guwahati

Ref. Case No. 08 of 2014

In the matter of an Industrial Dispute between :-

The workmen represented by General Secretary, Oil India Pipeline Mazdoor Union, Narangi, Guwahati.

....Claimant/workmen

Vrs.

The Management of Oil India Ltd. (Pipeline Division),
Narangi, Guwahati

.....O.P./Management

APPEARANCES:

For the Union : Mr. S.Das, Advocate

For the Management : Mr. S.N. Sarma, Sr. Advocate
Mr. A. Jahid, Advocate,

Date of Award : 30.12.2015

AWARD

1. This Reference has been initiated on an Industrial Dispute raised by General Secretary, Oil India Pipeline Mazdoor Union against the management of Oil India Ltd (Pipeline Division), Narangi, Guwahati for proper and correct interpretation of the Settlement dated 12.06.2006. which was referred to this Tribunal, vide Ministry's Order No. L-30011/41/2013-IR(M), dated 03.02.2014, for adjudication. The schedule of this reference is as under :

SCHEDULE

“Whether the action of the management of Oil India Ltd. (Pipeline Division), Narangi in treating the basic pay i.e. starting basic pay of Grade-I of the companies regular employees presently Rs. 4,800/- per month for unskilled category and starting basic pay of Grade-V of the companies regular employees presently Rs. 6100/- per month + other allowances i.e. DA etc. and as and when this basic pay is revised for the companies regular employees the same will be made applicable to the listed WCL (P) is just, proper and correct interpretation of the settlement dated 12.06.2006? If not, what relief the Oil India, Pipe Line Mazdoor © Union representing 225 WCL (P) contract labourer both in skilled and unskilled category will be entitled to?”

2. The case of the Union namely Oil India Pipeline Mazdoor (C) Union, which is a Union of workers engaged through Contractors by the management of Oil India Ltd. Pipeline Division Narangi, Guwahati, in nutshell, is that these contract labourers have been engaged by the principal employee i.e. the Oil India Ltd (Pipeline Division) through the various fields of work since 1953; and that for all practical purposes the contract labourers are regular employees of the Oil India Ltd. (Pipeline Division) and they are doing the jobs which are incidental to and of perennial nature. But the said labourers are deprived of due benefits of regular employees by the management on extraneous consideration. The Union submitted many representations to the management for fulfillment of their grievances including payment of similar wages and benefit with the similarly situated regular employees. The Union mentioned that the management entered into a Memorandum of Settlement with the Union on 12.6.2006

and categorically agreed to provide the benefits of basic pay on the same terms whenever the basic pay of the Company's regular employees shall be revised from time to time and also agreed to pay the same rate of basic pay as well as other related benefits as re-fixed to the regular employees of the Company. In an earlier agreement dated 23.12.1992 which was arrived at in presence of the Regional Labour Commissioner (C), Guwahati upon by the parties that the management shall pay same and similar wages to the contractual workers w.e.f. 01.07.1992. In view of the above mentioned MOS the management is bound to maintain the principle as agreed upon by them in the said settlement. The Union added that from the plain reading of the MOS dated 12.6.2006, the interpretation that as and when the basic pay is revised for Company's regular employees, the same will be made applicable to the listed WCL (P) is just, proper and correct interpretation of the settlement dated 12.6.2006 and accordingly it is a fit case where this Tribunal may answer the issue in positive in favour of the Union. It is also stated that in the mean time the pay scale of the regular employees have been revised but the management did not pay the said benefits to the members of the Union in terms of the Settlement dated 12.6.2006. Hence, the Union prayed for directing the management to pay the same amount of starting basic pay as given to the regular employees in terms of the aforementioned settlement dated 12.6.2006.

The Union by filing an additional Claim Statement mentioned that the contents of the written statement submitted by the management are misleading and not based on fact, which are not supported by the materials on record and are deemed to have been denied by the workmen. Union pleaded that the appropriate government referred the dispute following the due procedure laid down under Industrial Dispute Act and hence, the present order of reference is maintainable. The Union clarified it is not demanded the further benefit but only to revise their wages in terms of the Settlement dated 12.6.2006 and 13.1.2011. It is mentioned by the Union that the concerned workmen though, termed as Contract Labourers, they are working continuously for a long period and are performing the same job along with other regular employees, for which the representation submitted by the Union from time to time are entertained by the management and settled the grievance through settlement dated 12.6.2006 and 13.1.2011. The Management also regularized the service of some workers from the list of said WCL (P) who are working under the direct supervision of the management official and they are also getting most of the benefits as given to the regular employees. The Union averred that there exist clear cut employee employer relationship between the management and the WCL (P) since they are working directly under the control of the management according to the service condition prevailing in the establishment. It is also alleged by the Union that at the

time of fixing the scale of wages there are two components of the basic pay, first one is the amount shown in the pay scale and in addition to that the amount fixed as fitment benefit and in the instant case the fitment benefit is 30% of the basic pay but the WCL(P) have not been paid the amount of fitment benefit which is the crux of the dispute. The workmen again pointed out that a settlement was arrived at between the management of OIL and the workmen represented by the Indian Oil Workers Union, Duliajan Oil India Calcutta Employees Union and others on 13.1.2011 for revision of pay and allowance for the workmen of OIL, and in the said Settlement the existing scale of pay of workmen was revised which becomes the starting basic of Rs. 9300/- for Grade-I and Rs.13500/- for Grade-V for regular employees of OIL and this is the revision of pay scale but not the revision of basic pay. As per the settlement dated 13.1.11 Rs. 9300/- for Grade-I and Rs.13,500/- for Grade-V employees are not revised basic pay, the revised basic pay of the regular employees of the Company of Grade-I would be Rs. 11,120/- and for Grade-V of the regular employees of the Company would be Rs.14,130/-, and the said revised basic pay are applicable to unskilled WCL(P) and skilled WCL(P) respectively. The Union mentioned that in the settlement dated 13.1.11 in Clause-4.1 the revised basic pay was fixed as under noted method:

“4.1 The basic pay of the workmen, who were on the rolls of the company as on 31.12.2006 and continued thereafter shall be fixed/fitted in the corresponding revised scales as per the following treatment method.

- (a) Basic pay as on 31.12.2006 plus dearness allowance @ 78.2%,
- (b) Add 30% of total of (a) above as fitment benefit.
- (c) The amount arrived at (b) above shall be rounded off the next multiple of rupees ten which will be revised basic pay as on 01.1.2007 subject to the maximum of the respective revised pay scale corresponding to the grade of the individual employee.”

But the management has not applied the method of the revision of basic pay in case of WCL as fixed in case of regular employees of the Company.

3. The management of Oil India Ltd. (OIL) (Pipeline Division) contested the proceeding filing W.S., stating inter-alia, that since 1992/93 the WCL (P) were getting some benefits in the Pipeline Division of the management by an agreement in respect of the wages, and subsequently, there is a dispute for regularization of their services with the management, and ultimately the Union approached the RLC (C), raising the dispute with the same prayer but it was failed. Then they approached the Government of India for abolition of contract labourers as well as their regularization. The Government of India on receipt of the representation from the Union concerned took up the

matter and forwarded the same to the Central Advisory Contract Labourer Board (CACLB) for their recommendation. Accordingly, CACLB formed their 3 members committee which submitted its report wherein 2 of the members recommended for abolition of the Contract Labourers and one of the members differed. The recommendation of the said Committee was placed before the CACLB which by casting vote of the Chairman has recommended for abolition of the contract labourer. Accordingly on 25.01.2000 the Government of India issued a Gazette Notification prohibiting engagement of contract labourer in 20 jobs in Pipeline Division. The management being aggrieved by the said prohibition Notification filed a Writ Petition before the Hon'ble Gauhati High Court being W.P(C) No.1732/2000 and an interim order dated 7.4.2000 was passed by the Hon'ble Gauhati High Court staying the operation of the Notification till disposal of the Writ Petition which was subsequently dismissed by the Hon'ble Gauhati High Court vide its judgment dated 26.3.2002. The management preferred a Writ Appeal being No. as W.A. No.208/2002 wherein an interim order dated 17.5.2002 was passed staying the operation of the Notification dated 25.1.2000. During the pendency of the said Writ Appeal the Division Bench of the Hon'ble Gauhati High Court asked both the parties to come to a settlement out of the Court. Accordingly both the parties set down and after protected negotiation arrived at a settlement dated 12.6.2006 and the said settlement was placed before the Division Bench of the Hon'ble Gauhati High Court which accepted the said settlement and set aside the Notification dated 25.1.2000 issued by the Central Government prohibiting engagement of Contract labourer in 20 categories of jobs in Pipeline Division.

As per the settlement dated 12.6.2006 signed between the management and the Union WCL(P) deployed by the Contractor, of OIL's job in Pipeline will be paid by the respective contractors the following wages , allowances and the OIL will reimburse the same to the respective contractor.

Sl. No.	Unskilled	Skilled
1.	Starting Basic Pay of Grade-I of Company's the Company's Regular employees. As (presently Rs. 4800/- p.m.). As and when this basic pay is revised for the company's regular employees, the same will be made applicable to the listed WCL(P)s.	Starting Basic Pay of Grade-v of the Regular employees, (Presently Rs. 6,100 pm) and when this basic pay is revised for the company's Regular employee, the same will be made applicable to the listed WCL(P)s.

Dearness Allowance – As is paid to the Company's Regular Employees.

House Rent Allowance – 15% of Basic Pay.

Consolidated Allowance – 40% of Basic Pay.

Bonus/Ex-gratia – 8.33%

Provident Fund – As per the Act

Leave—20 days per annum.

National/Festival—03 National Holidays (if not on Sunday) plus one day for Bohag Bihu, one day for Durga Puja and one day for Deepawali.

The management further stated that in the mean time the wage revision for the regular employees became due and after protected negotiation a settlement dated 13.1.11 for revision of wages were arrived at, which was implemented with effect from February, 2011. Accordingly the starting basic pay of Grade-I and Grade-V have been changed. The management considering the settlement dated 12.6.2006 revised the wages of WCL(P) to the starting basic pay of Grade-I and Grade-V as per settlement dated 13.1.11. Thus the management fully implemented its assurance given in the settlement dated 12.6.2006 so far as WCL(P) are concerned, and there is no ambiguity to the settlement dated 12.6.2006 and same has been accepted by the Division Bench of the Hon'ble Gauhati High Court. As such, the question of interpretation of the clause of the said settlement dated 12.6.2006 does not arise at this stage i.e. after a period of long lapse of about 9 years. Thus the question of giving any further benefit as that of regular employees does not arise. It is also stated by the management that the contents of para Nos-1,2,3 and 7 of the claim statement filed by the Union are not true and hence they denied the contention raised in the said paragraphs.

The management added that the contract labourers are engaged by the contractors in their job contract and they have been paid by the contractors itself and hence, there is no employer-employee relationship with the principal employer. Since the Union has been raising various demands for long time in respect of contract labourers and after a series of discussion with the Union the settlement dated 12.6.2006 was arrived at. As per the said settlement the WCL (P) deployed by the contractors would be paid by the respective contractors as mentioned in Clause-2.1 and 2.2 of the said settlement and the OIL will reimburse the same to the contractors. Thus the contract labourers are not the regular employee of the management since the Notification dated 25.1.2000 has already been set aside by the Hon'ble Gauhati High Court and there is no prohibition for engagement of contract labourers, the present union can not raise the demand for regularization of the contract labourers by the management. The management contended that it agreed only for granting starting basic pay of Grade-I and Grade-V of WCL (P) with the regular employees and as and when the same is revised

the same will be made applicable to the listed WCL(P). The management categorically denied that it has never agreed to grant other related benefit as revised to the regular employees of the Company. It is also pointed out by the management that the settlement dated 22.12.92 has already been superseded by the settlement dated 12.6.2006 and as such, the Union can not now take recourse of said settlement dated 22.12.92; and that the management had been maintaining the same principle as per the settlement arrived between the parties and the Union members have already availed the benefit of wage revision of the regular workmen.

The management by submitting additional W.S. denied the contents of the Additional Claim Statement submitted by the Union and stated that they have implemented both the settlements dated 12.6.2006 and 13.1.11 and there is no scope of interpretation of the settlement dated 12.6.2006 that the WCL(P) are working under the direct supervision of the management. It is also contended by the management that in the settlement dated 12.6.2006 it is clear about the basic pay of the contract labourers and no other components for items were taken into consideration. Accordingly the basic pay has already been implemented without any ambiguity, and the revision of pay scale and fitment benefits are stipulated and individual item are related with the regular employees of the OIL and the same is not for the contract labourer.

4. In order to prove their respective case both the parties examined one witness each. Both the parties also proved their documentary evidence.

On conclusion of hearing of both the sides I have also heard argument from both the sides at length. I have also perused the entire case record along with the evidence adduced by both the sides.

5. The workman witness Sri Ashit Baran Sarkar, the President of Oil India Pipeline Mazdoor Union, Narangi, Guwahati stated that their Union is Contract Labour Union engaged by the management of Oil India Ltd. (Pipeline Division), Narangi, Guwahat through Contractors and the said contract labourers have been engaged by the principal employer in various fields since 1953 onwards. He stated that although the members of their Union are called Contractual Worker, as a matter of fact, they are regular employees like other employees and the management; and the jobs performing by them are incidental and perennial in nature but they are deprived of due benefit of regular employees and they have submitted many representations to the management for fulfillment of the grievances which includes payment of similar wages and benefit which the similarly situated employees are enjoying. He also stated that in view of the demand raised by the Union the management entered into a Memorandum of Settlement on 12.6.2006 and 13.1.11 wherein the management categorically agreed to give the benefits of starting basic

pay in the same terms whenever the basic pay of the Company's regular employees shall be revised from time to time. The W.W.1 mentioned that in the basic pay there are two components namely one is Scale of Pay and the other is fitment benefit, and in the agreement of 12.2.06 it was settled that the fitment benefit of both the scales shall be added to the scale of pay. The regular employees have been given their benefits but in case of WCL (P) the management refused to add the fitment benefit and as such, the WCL(P) have lost huge amount against the basic wages as the fitment benefit is part and parcel of the basic wages. So the dispute arises as because the management refused to add the fitment benefit of 30% with the starting basic of the workers. In support of his contention the W.W.1 has shown the calculation of basic pay which should have been as follows in respect of the unskilled and skilled labourers as below:-

CATEGORY : UNSKILLED

1. Basic as on 31-12-2006	-	-	RS	4800.00
2. 78.2% DA ADD to basic Rs.4800.00	4800.00	78.20%	Rs.	3,753.60
3. Total Amount			Rs.	8,553.60
4. 30% Fitment Benefit	8553.00	30%	Rs.	2,566.00
5. Total Basic			Rs.	11,119.68
6. Say (New Basic) as per our calculation			Rs.	11,120.00

CATEGORY : SKILLED

1. Basic as on 31.12.2006			Rs.	6,100.00
2. 78.2% DA ADD to basic Rs. 6,100.00		78.20%	Rs.	4,770.20
3. Total amount			Rs.	10,870.20
4. 30% fitment benefit		30%	Rs.	3,261.06
5. Total Basic			Rs.	14,131.26
6. Say (New Basic) as per our calculation			Rs.	14,130.00

The W.W.1 added that the management deliberately calculated the starting basic pay in a wrong manner to deprive the members of his Union. As per the memorandum of settlement dated 13.1.11 also the existing pay of the workmen revised and by the said revision the starting basic pay becomes Rs.9,300/- for Grade-I and Rs.13500/- for Grade-V for regular employees of OIL but, this is the revision of pay scale and not the revision of basic pay. He stated that in the said settlement dated 13.1.11 Clause 4.0 the revised basic pay is fixed as under:

4.0

4.1. The basic pay of the workmen, who were on the rolls of the Company as on 31.12.2006 and continued

thereafter shall be fixed/fitted in the corresponding revised scales as per the following treatment method :

a. Basic pay as on 31.12.2006 plus dearness allowances @ 78.2%.

b. Add 30% of total of (a) above as fitment benefit.

c. the amount arrived at (b) above shall be rounded off the next multiple of rupees ten which will be the revised basic pay as on 01.1.2007.

But the management has not applied the method of revision of basic pay in case of contract labourer as fixed in the case of the regular employees of the Company. In the settlement dated 12.6.2006 it is clearly mention that as and when the basic pay is revised for the Company's regular employees the same will be applicable to the listed WCL (P) but the revised basic pay as per Clause 4.0 of the settlement arrived at on 13.1.11 is not applied in case of WCL (P). The Clause 2.2 of the settlement arrived at on 12.6.2006 is also not applied in case of WCL(P) and hence, it is to be clarified that the contract labourer have no pay scale, they are paid a consolidated basic pay of Rs.9,300/- for Grade-I and Rs.13,500/- for Grade-V similar basic pay to the regular employees of the company.

The W.W.1 further stated that as per settlement arrived at between the management and their workmen on 13.1.2011 is Rs.9300/- for Grade-I and Rs.13,500/- for Grade-V employees are not revised basic pay, the revised basic pay of the Grade-I of the regular employee of the Company would be Rs.11,120/- and Grade-V of the regular employees of the company would be Rs.14,130/-. The said revised basic pay are applicable to unskilled WCL(P) and Skilled WCL(P) respectively. He again mentioned that the starting basic pay means newly revised basic scale pay along with 30% fitment benefit but the management deliberately not considering the said fitment benefit as part of starting basic pay which is not at all correct. In view of this the starting basic pay means basic scale pay as indicated in the pay scale plus fitment benefit as shown above. In support of his contention the W.W.1 has proved the memorandum of settlement dated 12.6.06 and dated 13.1.11 vide Exhibit-1 & Exhibit-2 respectively.

In course of his cross-examination he mentioned that he sometimes used to write A.B.Sarkar and both the Ashit Baran Sarkar and A.B.Sarkar is the same person and he did not submit any authority letter to the effect that he has been authorized to file Affidavit in this case as mentioned in para-1 of his evidence on Affidavit. He mentioned that the members of his Union can also apply for regular appointment whenever advertisement issued from the management in that behalf. He also said that prior to his holding the post of President of the Union Mr. Paresh Rahang was the President of the said Union. He also added that the statement made in para-3 of his evidence on Affidavit is not correct. He said that their

Union is contract labour Union, engaged by the management but no appointment letter issued against them, and their wages were paid by the contractors. He also said that Oil India Pipeline Division started its operation since 1953 however he denied the suggestion tendered by the management that the Oil India Pipeline Division was established and started its operation in 1957. However he failed to mention the names of the contract labourers who worked since 1953 and said that he was engaged as contract labourer in 1987. The W.W.1 admitted that in 1996 they filed a case before the Hon'ble Gauhati High Court for their regularization but the Hon'ble High Court did not regularize their services rather advised them to approach the management and the appropriate authority. Thereafter they took up the matter before the Ministry of Labour, Government of India, while the Ministry issued Notification dated 25.1.2000 abolishing the contract labourers in 20 categories in OIL Pipeline Division. While the management moved the Hon'ble Gauhati High Court challenging the legality of the Notification and the Single Judge of Gauhati High Court has been pleased to dismiss the said Writ Petition, while the management preferred Writ Appeal being No.208/02 and the Hon'ble Division Bench of Gauhati High Court insisted upon the settlement out of the Court between the parties. Thereafter the agreement marked as Exhibit-1 was signed and the same was placed before the Hon'ble Gauhati High Court which directed the management to provide all the benefits to the contract labourers in terms of the settlement. Subsequently the MOS marked as Exhibit-2 was signed between the management and regular workmen. He also said that issue referred to in this reference (vide schedule of reference) is same as that of the issue regarding the issued of basic pay of (Exhibit-1) On production of document by the management marked as Exhibit-A he has proved the said document which is a certified copy of the pay slip in respect of the contractual labourer Bolin Bora whom he know wherein the basic pay of Grade-V employee was Rs.13,500/-. He also proved a certified copy of document marked as Exhibit-B which is a pay slip of Sri Jagat Bora whom he know wherein the basic pay has been shown as Rs.9,300/- per month. The W.W.1 also admitted that during pendency of this reference they have entered into a settlement with the management recently vide Exhibit-C i.e. settlement dated 18.2.2015 before the RLC (C) whereupon Exhibit-C(1) is one of his signatures; and in Exhibit-C they have agreed that the basic pay of WCL(P) will be Rs.9,300/- for unskilled and Rs.13,500/- for skilled. He also confirmed that the Exhibit-C is still valid but they have not informed this Court about the said settlement marked as Exhibit-C wherein the issue involved is regarding wages of WCL(P) for skilled and unskilled, which is not the same as mentioned in the schedule of reference. He denied the suggestion tendered by the management that after signing of the MOS dated 18.2.15 they are not entitled to any

benefit/claim as mentioned in para-7 to 12 of their claim statement.

6. The management witness No.1, Sri Manab Kalyan Tamuly, Manager, (Finance & Accounts), Oil India Ltd. (Pipe Line Division), in his evidence mentioned that since 1992/93 the WCL(P) were getting benefits in Pipeline Division of Oil India Ltd. by an agreement in respect of wages. Subsequently a dispute for regularization of their service was raised by the WCL(P) and they approached the RLC(C) rejected the prayer of the WCL(P). Then they approached the Government of India for abolition of contract labourer as well as their regularization. Accordingly the Government of India took up the matter and forwarded the same to the Central Advisory Contract Labour Board (CACLB) for their recommendation. The CACLB consist of three members submitted their report wherein two of the Members recommended for abolition of the contract labour and the remaining one differed. Ultimately the said CACLB by casting vote of the Chairman recommended the abolition of contract labour and the Government of India issued Notification prohibiting the engagement of contract labourer in 20 jobs in Pipeline Division. Thereafter the management preferred Writ Petition against the prohibition Notification filed a writ petition before the Hon'ble Gauhati High Court being W.P.(C) No.1723/2000., in which the Hon'ble Gauhati High Court stayed the operation of the Notification vide order dated 7.4.2000 but subsequently the said writ petition was dismissed. While the management challenged the judgment of the Single Judge filing Writ Appeal being W.A. No.208/02. The Hon'ble High Court admitting the Writ Appeal, by an interim order stayed the operation of the Notification dated 25.1.2000 and in course of hearing the Writ Appeal the Hon'ble Division Bench of Gauhati High Court asked both the parties to come to a settlement out of Court. Accordingly a settlement dated 12.6.2006 was arrived at vide Exhibit-1 which was also accepted by the Hon'ble High Court and thereafter the Notification dated 25.1.2000 was set aside by the Hon'ble High Court.

The MW.1 mentioned that as per settlement dated 12.6.2006 (Exhibit-1) the WCL(P) deployed by the contractor On OIL's job in Pipeline would be paid by the respective contractors i.e. the starting basic pay of Grade-I of Company's Regular employees and as and when this basic pay is revised for the Company's regular employees, the same will be made applicable (the then) Rs.4800/- per month to the listed WCL(P) on unskilled grade-I while the starting basic pay of Grade-V of the Regular employees, (the then)Rs.6100/- p.m. and when this basic pay is revised for the company's Regular Employee, the same would be made applicable to the listed WCL(P)s on skilled Grade-V. In the meant time the wage revised for the regular employees became due and after protected negotiation a settlement dated 13.01.2011 for revision of wages were arrived at vide Exhibit-2. Accordingly the starting basic

pay of Grade-I and Grade-V regular employees has been revised and simultaneously the revised wages of WCL(P) to the starting basic pay of Grade-I and Grade-V as per settlement dated 31.1.2011. The management fully implemented its assurance given in the settlement dated 12.6.2006 so far the WCL(P) is concerned and there is no ambiguity in the settlement dated 12.6.2006 and the same has also been accepted by the Division Bench of the Hon'ble Gauhati High Court as such, the question of interpretation of the clauses of the said settlement dated 12.6.2006 does not arise at this stage, that too after a period of lapse of about 9 years. He also added that the contract labourers are engaged by the contractor in their job contract awarded in respect of the specific job and they have been paid by the contractors themselves, and there is no employer-employee relation with the principal employer. By the settlement dated 12.6.2006 it was agreed that the WCL (P) deployed by the contractors of Oil India Ltd's job in Pipeline Division will be paid by the respective contractors as mentioned in Clause 2.1 and 2.2. of the said settlement and the Oil India Ltd. will reimburse the same to the contractor. He further mentioned that the fitment benefits are given to the regular workmen, as on date of their wage revision the basic and DA got merged i.e. DA is neutralized. As such, no fitment benefit is given to the WCL(P) and their basic wages as on date of signing the agreement will remain the same which was just prior to wage revision, and as the Union admitted it that the contract labour does not have pay scale the question of granting fitment benefit to them does not arise and they are only entitled the starting basic pay of Grade-I of the Company's regular employees for unskilled and starting basic pay of Grade-V for the skilled as per agreement dated 12.6.2006. The MW.1 also stated that in the mean time the General Secretary of the Union submitted 13 points Charter of Demands vide their letter dated 03.08.2012 before the General Manager (PLS), Oil India Ltd. comprising and covering the aspects of revision of basic pay, increment, HRA, DA, TA, Medical Allowance etc. for the benefit of WCL(P) & unlisted WCL. Since no result for resolving the demands were arrived at the Union raised the dispute before the ALC(C), Guwahati. The ALC (C)/RLC(C), Guwahati hold the conciliation between the parties on 27.01.2014, 12.02.2014 and 30.04.2014. The management also initiated discussion at bipartite level and as a good gesture and on practical perspective, the management formed a multidisciplinary committee consisting of 5 officers of OIL on 20.07.2014 to examine and explore the extent of feasibility in conceding the demands of WCL(P). The committee has submitted its recommendation but the Union did not accept the offer of packages and left the window open for further discussion on certain issues. Finally, the RLC(C) has intervened in the dispute and hold further conciliation on 18.02.2014 which yielded result and both the parties agreed to resolve the disputes by signing a settlement dated 18.02.2015 vide Exhibit-C which

is a tripartite settlement and after signing of the said settlement all the pending dispute including the dispute involved in the present dispute has been settled between the management and the Union. He also added that as per revision of wages all regular employees and the starting basic pay of Grade-I and Grade-V has been fixed and the same benefit has been provided to the members of the Union. In support of this contention the MW.1 has proved the copies of pay slip of the regular employees as well as WCL(P) vide Exhibit-A,B,D & E.

In course of his cross examination the MW.1 stated that he has been holding the executive grade and his pay scale is not the same as those given to the above mentioned two employees concerning the Exhibit-D & E as well as the workmen involved in this reference. He denied the suggestion tendered by the Union that the information regarding pay structure in Exhibit-D & E are not relevant to the present reference between the parties in the year 2006. He said that the fitment benefit was given to the employees who were in the roll of the Company upto 31.12.06 and the said benefit has been added to the basic pay and D.A. It is also mentioned by the MW.1 that after including the fitment benefit with the basic pay and the other benefit such as D.A., H.R. etc. are computed on the basis of the fixed scale and the pay scale fixed after inclusion of fitment benefit. The fitment benefit with the basic scale of pay as on 1.1.2007 was 30% of basic + D.A. The merger of fitment benefit was not provided to the WCL workers. He also denied the suggestion that since the fitment benefit i.e. merger of 30 % of the basic + D.A is granted to all the employees of the Management Company the WCL workers are also entitled to the said benefit. He also said that the basis pay includes the pay after merger of fitment benefit, but he denied the suggestion tendered by the Union that the WCL workers are entitled to fitment benefit since it is included in the basic pay of the regular employees. The MW.1 further confirmed that the roaster/attendance, etc. are being maintained by the contractor in respect of the WCL workers but he could not say exactly since he had been working in the finance side, if the WCL workers are being controlled and their attendance is maintained by the management. He again stated that in the MOS marked as Exhibit-1, the contractors are not signatories. However he denied the suggestion of the Union that contractors had no roll to play in regulating the duties of the WCL as well as the payment of their wages, etc. He also denied that the management has been intentionally depriving the WCL workers from getting the fitment benefit misinterpreting the terms and conditions of the MOS marked as Exhibit-1.

7. The present dispute has been referred to this Tribunal for adjudication regarding interpretation of a particular Clause i.e. Clause 2.0 which includes (Clause 2.1, Clause 2.2) of the MOS dated 12.6.2006 (Exhibit-1) regarding treating the basic pay i.e. starting basic of a

grade-I of Company's regular employees presently Rs.4800/- per month for unskilled category and for skilled category consolidated basic of Grade-V of the Company's regular employees presently Rs.6,100/- per month + other allowance, etc. and as and when this basic pay is revised for the Company's regular employees the same will be made applicable to the listed WCL (P). The crux of the dispute is whether the fitment benefit of 30% of basic + D.A. is to be merged at the time of fixing the basic pay of the WCL(P) in terms of the MOS dt.13.1.11. (Exhibit-2) as claimed by the Union.

During argument Mr. S.Das, learned Advocate for the workmen submitted that as per the agreement dated 12.6.2006 para-2.0 the WCL are entitled to fitment benefit in addition to fixation of their basic pay at par with the regular employees but the management has deprived the workmen misinterpreting the said Clause of the MOS (Exhibit-1) at the time of fixing basic pay of the WCL(P) workmen. Mr. Das pointed out that as per the subsequent MOS dated 13.1.11 (Exhibit-2) arrived at between the management of OIL and their workmen represented by their Indian Oil Workers Union, Duliajan; Oil Indian Calcutta Employees Union; Rajasthan Oil Employees Union, Jodhpur; Petroleum workers' Union (OIL Unit), New Delhi; and Mahanadi Petroleum Exploration Employees Union, Bhubaneswar on revision of pay and allowance for the workmen of OIL in which it was agreed to fix the basic pay of the WCL(P) on the basis of the basic pay fixed on revision of pay scale of the regular employees of the management + D.A and adding 30% of the total of basic pay as on 31.12.06 + the DA @ 78.2%. But the management interpreted the basic pay of the Grade-I (unskilled) and Grade-V (skilled) contract labourer @ Rs.4800/- and Rs.6100/- per month without calculating the 30% of the basic pay + D.A being fitment benefit as per the revised scale of pay of all the regular employees. Mr. Das, learned Advocate for the workmen also pointed out that MW.3 in course of his cross-examination categorically admitted that the pay scale of the WCL (P) has been fixed without merging fitment benefit as on 1.1.07 which was 30% of the basic + DA and the merger of fitment benefit was not provided to the WCL(P) workers.

8. Mr. S.N. Sarma, learned Sr. Advocate for the management submitted that the reference was made by the appropriate Government for introduction of the terms of agreement dated 12.6.2006 and there is no mention of the fitment benefit of 30% in the Schedule of reference as such, this Court can not go beyond the issue referred to in the order of reference. He also added that the instant dispute has been raised by the WCL(P) contract labourers and hence, this Tribunal has no jurisdiction to adjudicate this dispute since there exist no relationship between the workmen and the principal employer as they are not directly employ by the principal employer as it is an admitted fact. In support of his contention Mr. Sarma relied upon the

case of Mukand Ltd—vrs—Mukand Staff & Officers' Association reported in (2004) 10 SCC 460 wherein it was decided that the Industrial Tribunal can not adjudicate matters beyond the purview of the dispute referred to and that if the reference had covered non workmen, the Tribunal acting within its jurisdiction under Industrial Disputes Act could not have adjudicated the dispute insofar it relates to non-workmen. In this case it is also held that the employer and the employees could not, by their conduct in concluding settlements, create or confer such jurisdiction on the Industrial Tribunal. The Hon'ble Supreme Court in that case also held that where an employee is workman or non-workmen, has to be determined on the basis of his duties, responsibility and powers as laid down in Section 2 S of I.D.Act and not on the basis of his grade. Mr. Sarma again referred the decision laid down in Ashok Leyland Ltd. —vrs— Government of Tamilnadu 1991 (1) LLJ 113 wherein it is decided that no reference can be made under the Provision of Industrial Dispute Act, 1947 in regard to the demand of the security guards working under contractor for payment of wages and other benefits on par with regular security guards engaged by the management, such a reference is maintainable only against the contractor.

9. Mr. S. Das, learned Advocate for the Union, objecting to the submission of Mr. S.N.Sarma, learned Advocate for the Management stated that the Ministry has referred the dispute for introduction of the terms and condition of the agreement dated 12.6.2006 (Exhibit-1) wherein it was decided to fix the basic pay of the WCL(P) of the revision of pay scale of the regular employees and since the pay scale of the regular employees have been fixed together with fitment benefit of 30% of the basic + D.A. and this formula in fixing the basic pay of the WCL(P) should have been followed but the management misinterpreted these terms and conditions of the MOS marked as Exhibit-1 as such, there is nothing to show that this Tribunal has got no jurisdiction to decide the issue involved in this reference beyond the terms of reference. Hence, Mr. Das submitted that the pleas taken by the management is not sustainable.

10. On perusal of the evidence on record along with the pleadings of both the sides and the documents available on record it appears that the workmen Union is a Union of WCL(P) workers and obviously they are not the employees recruited by the management directly. Further the names of these WCL(P) employees have been not on the roll of the management. The Ministry of Labour, Government of India vide Gazette Notification dated 25.1.2000 prohibited engagement of contract labourer in 20 categories of jobs in the Pipeline Division of OIL while the management challenging the above Notification by filing a Writ Petition in which the Hon'ble Gauhati High Court vide its interim order dated 7.4.2000 stayed the operation of the Notification till disposal of the Writ

Petition. Ultimately the said W.P. was dismissed vide the judgment and order dated 26.3.02 passed by the Hon'ble Gauhati High Court. The management again preferred Writ Appeal being No.208/02 while the Hon'ble Gauhati High Court vide its interim order dated 17.5.02 stayed the operation of the Notification and asked both the parties to come to a settlement out of Court. Accordingly both the parties set down and after a protected negotiation arrived at a settlement dated 12.6.2006. In the MOS dated 12.6.2006 (Exhibit-1) in Clause 2.2 of the MOS it was agreed that the basic pay of the listed WCL(P) labourers would be paid by the respective contractors and for the unskilled (Grade-I) workers starting basic pay of the Company's all the regular employees at that time Rs.4800/- per month and as and when the basic pay is revised for the Company's regular employees the same would be made applicable to the listed WCL(P). Similarly the basic pay of Skilled (Grade-I) of the Company's regular employees the then basic pay Rs.6100/- per month, and as and when this basic pay is revised for the company's regular employees the same will be made applicable to the listed WCL(P)s. In the said MOS, the D.A. and other allowances, H.R. , Bonus, P.F., EL, CL, National festival and medical facilities are also provided. It is also specifically mentioned in the said settlement that this settlement superseded all other earlier settlement/agreement on any matter regarding listed contract labourers in Pipeline. In the mean time the wage revision of the regular employees became due and after protecting negotiation a settlement was arrived at on 13.1.11 vide Exhibit-2. Accordingly the starting basic pay of Grade-I and Grade-V regular employees of the management has been changed. MOS marked as Exhibit-2 the pay scale of the regular Grade-I and Grade-V has been revised from 4800/- to Rs.9300/- and Rs.6100/- to Rs.13,500/- respectively. Accordingly the unskilled WCL(P)s and the Skilled WCL(P)s are entitled to the starting basic pay of Grade-I and Grade-V regular employees of the management Company as per the agreement dated 12.6.2006. It is pertinent to mention here that the WCL(P) does not have any pay scale like that of regular employees of the Company. The MOS dated 13.1.11 (Exhibit-2) was arrived at settling the terms and conditions regarding salaries, allowances and other benefits in respect of all categories of regular workmen of OIL in any of the existing scales of pay as on 31.12.06 and in addition to revision of pay scale fitment formula/benefits also have been provided therein. However in the MOS dated 12.6.2006 it has been clearly mentioned that the basic pay of the WCL(P) skilled and unskilled would be fixed on the basis of the revision of scale of pay of the regular employees of the Company, and there is no mention on any fitment benefit/formula. The MOS marked as Exhibit-2 the settled terms of fixation of the pay of all the categories of the regular employees of the management and the fitment benefit has been given in order to fix the pay scale of the regular employees as on the agreed dates by providing fitment benefit/formula.

11. The management accordingly fixed the pay scale of the unskilled and skilled of the WCL(P) on the basis of the revised starting basic scales of pay from Rs.4800/- to Rs. 9300/- the starting basic scale of Grade-I of regular employees of the Management Company & Rs.6,100/- to Rs.13,500/- P.M., the starting basic pay scale of Grade-V of the regular employees of the Management Company. The Union raised the dispute alleging that they have been deprived of getting the benefit of fitment formula as per the clause-4.1 of the MOS marked as Exhibit-2. The Management witness No.1 in support of the contention of the management that as per the revision of wages of regular employees the starting basic pay of Grade-I and Grade-V has been fixed and the same benefits has been provided to the WCL(P) labourers, has proved the copies of pay slip of the regular employees, both the skilled and unskilled and the WCL(P)s both skilled and unskilled vide Exhibit-A, Exhibit-B & Exhibit-D and Exhibit-C respectively. Since the contract labourer does not have any pay scale and as there is no mention to fix the pay scale of the WCL(P)s with merger of the fitment benefit in the MOS dated 12.6.2006, in my opinion the claim of the Union that the management in treating the basic pay of the WCL(P)s on the basis of the starting basic pay of Grade-I of the regular employees i.e. Rs.4800/- per month for unskilled category and starting pay of Grade-V of the company's regular employees i.e. Rs.6100/- p.m for the skilled WCL(P) and as and when the basic pay is revised for the company's regular employees the same would be made applicable to the listed WCL(P)s without merger of fitment benefit i.e. 30% of the basic pay + DA is not just, proper & correct in terms of the MOS dt. 12.6.2006, is found not established as well as maintainable.

Mr. S.N.Sarma, learned Advocate for the management raised another argument that the General Secretary of the Union submitted 13 points Charter of demand before the management comprising and covering the aspects of revision of basic pay, increment, HRA, D.A, T.A., medical allowances, etc. for the benefits of WCL(P) and unlisted WCL(P)s and ultimately the dispute was raised before the ALC (C), Guwahati who after holding conciliation on different dates resolved the issues. Similarly the management also initiated discussion at bipartite level and formed a Multi Disciplinary Committee consisting of 5 officers of OIL to examine and explore the extent of feasibility in conceding the demand of WCL(P). The Committee has submitted its recommendation and finally the RLC (C), has intervened in the dispute and held further conciliation on 18.2.2015 which yielded result and both the parties signed a settlement in presence of the RLC (C), Guwahati vide Exhibit-C. Accordingly after signing the settlement all the pending disputes including the dispute regarding the basic pay of skilled & unskilled WCL(P) . But the Union in this reference remained silent as to the said settlement (Exhibit-C). However the said conciliatory settlement marked as Exhibit-c was brought by the

management in course of cross-examination of W.W.1 Sri A. B. Sarkar.

12. On perusal of the settlement dated 18.2.2015 marked as Exhibit-C it appears that the settlement was arrived at between the parties in presence of RLC (C), Guwahati wherein the WW.1 Sri A.B. Sarkar, President and Sri Kamaleswar Barman, Legal Adviser Sri Bhupen Das, General Secretary, including others belonging to the Oil India Pipeline Mazdoor (C) Union are the signatories. In Clause 11© of the MOS (Exhibit-C it has been categorically agreed upon by the Union that they will not raise any further issue which is settled therein or not to put any other fresh demand or during the period of operation of this MOS. (i.e. upto 31.12.2019) As per provisions of Section 18(3) (a) (c) and (d) of I.D.Act the said MOS (Exhibit-C) is binding on all the parties to the Industrial Disputes, where a party referred to in Clause-(a) or Clause-(c) is an employer his heir successors or assignees in respect of the establishment to which the dispute relates; and where a party referred to in Clause-(a) and Clause-(d) is composed of workmen all persons who are employee in the establishment or part of the establishment as the case may be, to which the disputes relates on the date of dispute and all persons who subsequently became employee in that establishment or part. In the MOS marked as Exhibit-C (page-2) both the parties agreed the basic pay of all unskilled WCL(P) and skilled WCL(P) shall be equal to the starting basic pay of Grade-I of regular employees (presently Rs.9,300/- p.m) and the starting basic pay of Grade-V of the Company's regular employees (presently Rs.13,500/- p.m) respectively; and as and when this basic pay of both the categories is revised for the Company's regular employee the same will be made applicable to both the listed WCL(P)s (both skilled and unskilled) respectively. From the settlement dated 12.6.2006 marked as Exhibit-1, Clause 2..0 it is clear that both the parties agreed the basic pay of unskilled WCL(P) and skilled WCL(P) to be fixed equally to the starting basic pay of Grade-I and Grade-V of the Company's regular employees i.e. Rs.4800/- PM. And Rs. 6,100/-P.M. respectively, along with other allowance, where there is no mention of any fitment benefit @ 30% of the basic + D.A. Although the Union claimed to fix the basic pay of WCL(P) unskilled and skilled on the basis of the basic pay + D.A. merging the fitment benefit i.e. 30% of DA + basic pay, it is clear that the fitment benefit is applicable in case of the regular employees of the Company as it appears from the MOS marked as Exhibit-B.

The dispute has been referred by the Ministry to adjudicate whether the action of the management in treating the basic pay i.e. starting basic pay of the Grade-I & Grade-V of the Company's regular employees @ Rs.4800 and Rs.6100/- per month respectively applicable to the listed WCL(P) unskilled and skilled respectively is just and proper interpretation. The revision of pay was made by virtue of the MOS marked as Exhibit-2 for the regular employees of the management Company wherein

the fitment benefit has been given to the regular employees as per their formula of fixation scale of pay. But there is no mention of fixation of scale of pay as on the date of revision in the MOS marked as Exhibit-1. Further the MOS arrived at between the parties on 18.2.2015 the same formula of the fixation of basic pay of the WCL(P) both unskilled and skilled have been agreed upon both the sides, as such, the interpretation of the management Company in treating the basic pay i.e. the starting basic pay of Grade-I and Grade-V of the Company's regular employees presently Rs.4,800 and Rs. 6,100/- per month + other allowance is found to be just proper and correct interpretation of the settlement dated 12.6.2006.

13. The claim of the Union for merger the 30% of fitment benefit as agreed upon by the management and the regular employees of different Union marked as Exhibit-B is meant for the regular employees of the management Company and there is no mention of fitment benefit in the agreement dated 12.6.2006 (Exhibit-1) in respect of WCL(P)s which has not been mentioned in the reference as such, this Tribunal has no jurisdiction to adjudicate the matter regarding merger of the fitment benefit as claimed by the Union, which is not within the purview of the dispute referred to by order of reference.

14. In view of my above discussion it is held that the action of the management of Oil India Ltd. (Pipeline Division), Narangi in treating the basic pay i.e. starting basic pay of Grade-I of the Companies regular employees presently Rs.4,800/- per month for unskilled category and starting basic pay of Grade-V of the companies regular employees presently Rs.6,100/- per month + other allowances i.e. DA etc. and as and when this basic pay is revised for the companies regular employees the same will be made applicable to the listed WCL (P) is just, proper and correct interpretation of the settlement dated 12.06.2006. Accordingly this reference is decided in affirmative against the Union.

No cost is awarded.

Send the Award to the Ministry as per procedure.

Given under my hand and seal of this Court on this 30th day of December, 2015, at Guwahati.

L. C. DEY, Presiding Officer

नई दिल्ली, 4 जनवरी, 2016

का.आ. 57.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीआईएल के प्रबंधतंत्र के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 52/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 04/01/2016 को प्राप्त हुआ था।

[सं. एल-22013/1/2016-आईआर (सी-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 4th January, 2016

S.O. 57.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 52/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECIL. and their workman, which was received by the Central Government on 04/01/2016.

[No. L-22013/1/2016-IR(C-II)]
RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Kishori Ram, Presiding Officer In-charge
(Authorized for adjudication)

Dated the 22nd day of September, 2015

INDUSTRIAL DISPUTE L.C. No. 52/2006

Between:

Sri M. Bhaskarachary,
S/o M. Sriharichary,
H.No.40-69,
Kasturibanagar,
Moulali, Hyderabad – 500 040. ...Petitioner

AND

Director Personnel,
E.C.I.L. Post ECIL
Hyderabad – 500 062. ...Respondent

Appearances:

For the Petitioner : M/s. V.R. Balachary &
P. Prabhakar Rao, Advocates
For the Respondent: M/s. P. Nageswar Sree, K.
Raghuram Reddy & Ch.
Venkata Raju, Advocates

AWARD

This is a petition filed under Sec.2A(2) of the Industrial Disputes Act, 1947 filed on 9.3.2006 by Sri M. Bhaskarachary, the workman, who worked as (who will be referred to as workman) an Asst. Consultant against the management of E.C.I.L., for his reinstatement in the service of the management with continuity of service and all attendant benefits.

2. The case of the Petitioner is that he worked as an Asst. Consultant with the Executive Engineer since his appointment directly to attend the work entrusted to him. He was qualified in I.T.I.(Electronics) and was so appointed in the year 2001, for attending the work of Electronics accompanied by the Executive Engineer of the Respondent.

He used to work not only within the twin cities but also he was sent to other states i.e., Bombay, Delhi, Chennai and U.P. to work on the basis of the identity card issued by the Respondent to him as the employee of the E.C.I.L., for repairing the electronic machines of Nuclear Power Control System installed by the Respondent in various states. Further he got his identity cards renewed for the period from 10.1.2001 to 31.3.2005. He worked continuously for more than 240 days under the Respondent. Police verification as per the letter of the Senior Manager/Section Incharge, C.A.D., to the Dy. General Manager was also done about the Petitioner as a regular work for the repairs under the company in various States and accordingly he was also allotted Serial No.1650 by management. He had no adverse remarks in performance of his duty. But the Respondent instead of regularising his service orally retrenched him unilaterally without any order as required under Sec.25-F of the Industrial Disputes Act, 1947, even without holding any regular enquiry. This retrenchment by the Respondent without any notice for payment of compensation under the provision of Sec.25-F of the Industrial Disputes Act, 1947, is illegal, invalid and liable to be set aside. Moreover, the Petitioner is over 32 years and has no scope for any alternative employment at this stage. Hence, the Petitioner asked for his reinstatement in service with full back wages and attendant benefits.

3. Whereas counter case of the Respondent challenging the maintainability of the industrial dispute in Law and on facts is that the petition under Sec.2A(2) of the Industrial Disputes Act, 1947 being incorporated by the A.P. Amendment Act 32 of 1987 is ultravires, as the State Government owns no power to amend said section of the Act which was passed by the Central Government. Thus, it being violative of the Article 14 of the Constitution of India is liable to be struck down as null and void, because it is being beyond the jurisdiction of this Tribunal/Labour Court and it stands beyond the adjudication. The Director(Personnel) is the Officer in the Electronics Corporation of India Limited. So he can not have any grievance against the said officer in his individual capacity. Therefore, the Respondent is not a party to the instant proceeding. Moreover, the Petitioner was never employed by the Respondent, rather he appears to have been engaged by the contractor M/s. Vision Management Consultants, employer of the Petitioner, but the said contractor has not been made a party to it. Hence, the present proceedings suffers from misjoinder or the non-joinder of the necessary parties. M/s. Electronics Corporation of India Limited (for short E.C.I.L.) had entered into a contract with M/s. Vision Management Consultants (for short VMC), as per the purchase order No.B-6124 dated 20.6.2002 for providing consultants to ECIL subject to the various terms and conditions. M/s. VMC in pursuance of that provided persons to ECIL and in turn ECIL paid the amounts agreed as per the aforesaid terms

and conditions. The instant Petitioner herein was one of such consultants who was deputed by the same contractor. The Petitioner accordingly worked for on behalf of the contractor. The aforesaid M/s. VMC (Contractor) as per its letter dated 4.4.2005 informed the ECIL that they have terminated the services of their consultants six in number w.e.f. 1.4.2005 (including the Petitioner) by name :- 1. D. Hemalatha, 2. Ch. Kutumba Rao, 3. Ch L Narsimham, 4. M Bhaskara Chary (Petitioner herein), 5. D. Ramachandraiah and 6. K. Bhagya Rekha. Under these circumstances the Petitioner is not a workman of the ECIL under Sec.2(s) of the Industrial Disputes Act, 1947, as he was neither employed nor engaged directly at any time, nor paid any remuneration to him by the ECIL. As such neither the Petitioner has any locus standi to invoke the jurisdiction of this Tribunal nor this Tribunal has any jurisdiction to entertain it for adjudication. As it is beyond the ambit of the said Act. There was no relationship of jural relationship between employer and employee between the instant Petitioner and the ECIL.

4. Further specifically but totally denying the allegations of the Petitioner as stated in his petition, it has been alleged on behalf of the Respondent that the Executive Engineer in the organization has no jurisdiction to appoint any employee in any category, so he never made any such appointment. The Petitioner was deputed by the aforesaid contractor as a consultant in the ECIL which in turn had availed the consultancy services of the Petitioner in its exigencies. So far as issuance of the identity card is concerned, it was issued to the Petitioner only for his entry into the office premises as a consultant, but it does not confer on him any right for employment on any post in the ECIL, and the such Identity cards were issued by the ECIL to the Petitioner as long as he was deputed as a consultant by the same contractor. The allegation of the Petitioner about his continuous work in the employment for more than 240 days is totally incorrect. The Petitioner never attended to any skilled, unskilled, manual, clerical, technical, operational work. The police verification in respect of the consultants deputed to the ECIL by the said contractor was effective, so the Petitioner can not claim for the status of workman in ECIL on that score, and for that very purpose of police verification, the serial number was allotted, identity card issued to the Petitioner, which can not give any status of a workman to the Petitioner. In such circumstances, the Respondent had neither terminated nor retrenched the Petitioner from any allotted service in violation of Sec.25 F of the Industrial Disputes Act, 1947. Rather the Petitioner and five others were terminated by their aforesaid contractor, M/s. VMC, so there is no retrenchment nor any violation of Sec.25-F of Industrial Disputes Act, 1947. Thus, the Petitioner is not entitled to any relief as claimed by him. Thus, the petition being devoid of merits is liable to be dismissed in limine.

5. In view of the pleaded facts of both the parties, the main question in issue arises for due consideration is, “Whether the Petitioner was retrenched or terminated from his service under the provisions of Sec.25-F of the Industrial Disputes Act, 1947?”

Finding with the reasons:

6. Mr. V.R. Balachary, the learned Advocate for Petitioner, Mr. M. Bhaskarachary, has submitted that Petitioner though had initially worked as a casual labourer under the Respondent, yet was interviewed and he was selected as Consultant of the company; thereafter he continuously worked for five years, on account of that, the Chief of the company had recommended for his regularization on the satisfaction of his work. Further it has been submitted on behalf of the Petitioner that admittedly the workman was issued his identity card and he was also sent to different States for his work as per the documents concerned (Ex. W7 & W8); in spite of all the aforesaid facts, the Petitioner was orally but illegally terminated without any compensation to him, as there was a solid relationship of employer and employee between both the parties. Relying up the authority: AIR 2000 SC 1080, VP Ahuja Vs. State of Punjab in reference to Arts.40, 16 of the Constitution of India, the Learned Counsel for the Petitioner has emphatically submitted that the termination of the service of a probationer on the ground of his unsatisfactory work was held to be arbitrary and punitive without complying with the principles of natural justice (para 7); as such the Petitioner is alleged to have been entitled to reinstatement in his service with its continuity and full back wages and attendant benefits.

7. Though no Learned Counsel for the Respondent had appeared twice for arguments in this case; in view of the oldest case, the case was earlier taken up for final disposal in view of the material as adduced on behalf of both the parties. Later on, despite allowing the I.A. No. 01/2015 in the I.D. filed by the Petitioner/Respondent, Learned Counsel Mr. Venkata Raju for the Respondent did not appear on 21st September, 2015 for argument either oral or written; hence, so it was reserved for an award. On perusal and consideration of the material available on the case records, I find that the instant issue relates to the claim of the Petitioner for his regularization in the service under the Respondent. But it needs the consideration of the prime issue;

“Whether any jural relationship of the workman (Petitioner) with the Director, Personnel of the ECIL, Hyderabad (Respondent) exists at the relevant time between both the parties?”

8. From the perusal of the case record, I find that the Petitioner had neither any proof of his appointment by the Respondent management as a consultant in the company nor any proof for direct appointment by his salary

paid to him by the Respondent for any point of time during the relevant period. Admittedly the Petitioner was never sponsored by the Employment Exchange for his employment or even on the basis of any publication in the daily for any application for the post of consultant candidature. The Petitioner could not be able to establish the matter of his interview for the post. But admission of the Petitioner about his working as software consultant in the year 2001 for 2 to 3 years and his termination along with the five other persons by the M/s. VMC from their service in the year 2005 evidently indicate that all his documents filed by the Petitioner in his instant case as consultant. The status of the workman stands established as contractual workman in the Respondent company because the Respondent company had entered into a contract with M/s. VMC by placing a purchase order No. B-6124 dated 20.6.2002 (Ex.M2) for providing consultants (including the Petitioner) for employment of contractual work in the premises of the Respondent as well as at various sites across the country subject to the terms and conditions of the same purchase order. The conformity statement of MW2 Sri K. Mallikarjuna Rao, the CEO of the aforesaid M/s. VMC, Hyderabad establishes the Petitioner and other similar five persons who were engaged by their establishment for accomplishing the work of the Respondent as per the aforesaid purchase order were terminated from the service of the consultants w.e.f. 1.4.2005 as per their order dated 4.4.2005 (Ex.M3) which was addressed to the Dy. General Manager of the Respondent company. MW2 Sri K. Mallikarjuna Rao, the CEO of the contractor M/s. VMC management, Hyderabad appears to have fully established the Petitioner along with the other five persons namely, 1. D. Hemalatha, 2. Ch. Kutumba Rao, 3. Ch. L. Narasimham, 4. D. Ramachandraiah and 5. K. Bhagya Rekha was engaged as consultant for their placement in the companies concerned including the Respondent as per the terms and conditions between them for 2 or 3 years; following the contract period over, he (MW2) got not other work for him. The affirmative statement of MW2 that the Petitioner was neither engaged nor paid any salary for his consultant work by the Respondent clearly indicates the Petitioner was not an employee of the Respondent. It also appears that on enquiry, all the candidates including the Petitioner by the contractor were interacted with the Respondent which was never any interview for him/them. The company used to address letters to the Police for the verification of the antecedents of the contractual workmen including the Petitioner prior to sending them to other States for assigning work as per the terms and conditions of the purchase order. Temporary workers of the aforesaid contractor were issued only their causal entry permits (Exs. W1, W2 & W3) by the security Department, and thereafter their punching cards i.e., access cards which clearly indicate the temporary workers of the contractor including the Petitioner. They are not connected with the

management as an employee in any way. It is also undisputed that as per the terms of the purchase order (Ex.M2) of the Respondent company from the intermediary contractor M/s. VMC (Ex.M2) under the clause 11 specifies the instruction to be given by the contractor for the execution of the work. In such situation, the letters/applications for out door visit to Karnataka, the BARC, or for Police verification can not be a solid ground for the claim of the Petitioner for his regularization in the service.

9. On perusal and consideration of the material as adduced and made available on the case record, I find that workman Petitioner Sri M. Bhaskarachary was engaged as a contract labourer, along with five others namely, D. Hemalatha, Ch. Kutumba Rao, Ch.L.Narasimham, D. Ramachandraiah and K. Bhagya Rekha by the contractor M/s. Vision Management Consultants by Virtue of the contract with the OP/management of M/s. Electronics Corporation of India Ltd., (E.C.I.L.) as per the purchase order No.B-6124 dt. 20.6.2006 for providing consultants to E.C.I.L., subject to the various terms and conditions. The Petitioner accordingly worked as one of such consultants on behalf of the contractor. Thereafter, the aforesaid contractor M/s. VMC as per its letter dt. 4.4.2005 informed the OP/ECIL of the termination of the services of their aforesaid consultants including the Petitioner w.e.f. 01.4.2005. At the point, it is settled law as held by the Hon'ble Apex Court in the case of Steel Authority of India Ltd., Vs. N.V. Water Front Workers reported in 2001 LAB.I.C. 3656(CB)(I) as such:

“It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms ‘contract labour’ establishment and ‘workman’ does not show that a legal relationship between a person employed in an industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word ‘workman’ is defined in wide terms. It is a generic term of which contract labour is a species. It is true that a combined reading of the terms ‘establishment’ and ‘workman’ shows that a workman engaged in an establishment would have direct relationship with the principal employer as a servant of mater. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the Action issuing notification under S.10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the Rules and the Forms made thereunder.” (Paras 101, 114,117)

10. In view of the aforesaid finding it stands clear that since there was no jural relationship of employer and employee between the OP/Principal Employer and the contract labourer, so no question of retrenchment or termination of the Petitioner from his service under the provisions of Sec.25F of the Industrial Disputes Act, 1947 arises. Hence, the Petitioner is not entitled to any relief whatsoever.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 22nd day of September, 2015.

KISHORI RAM, Presiding Officer

Appendix of Evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri M. Bhaskara Chary	MW1: Sri K. Srinivasa Rao
	MW2: Sri K. Mallikarjuna Rao

Documents marked for the Petitioner

Ex.W1:	Photostat copy of identity card	Ex.W18:	Photostat copy of permission lr. dt. 21.8.2002
Ex.W2:	Photostat copy of another identity card	Ex.W19:	Photostat copy of temporary entry permit lr. dt. 21.10.02
Ex.W3:	Photostat copy of another identity card	Ex.W20:	Photostat copy of temporary entry permit lr. dt. 28.7.02
Ex.W4:	Photostat copy of another identity card	Ex.W21:	Photostat copy of lr. dt. 28.12.08 to work on sunday
Ex.W5:	Photostat copy of punching card	Ex.W22:	Photostat copy of lr. to do extra work
Ex.W6:	Photostat copy of extra work permission issued by NPP 5 & Detectors	Ex.W23:	Photostat copy of lr. to do extra work
Ex.W7:	Photostat copy of lr. issued by Respondent to the Petitioner to enter into Rajasthan NPP site dt. 21.7.2001	Ex.W24:	Photostat copy of lr. to proceed to Delhi and advance of Rs.2500/-
Ex.W8:	Photostat copy of tour bill	Ex.W25:	Photostat copy of settlement of account
Ex.W9:	Photostat copy of tour bill	Ex.W26:	Photostat copy of attendance statement
Ex.W10:	Photostat copy of permission slip dt. 7.9.2001	Ex.W27:	Photostat copy of lr. dt. 4.9.03 to Sri PA Pillai to allow the Petitioner to work at their place
Ex.W11:	Photostat copy of lr. by Respondent dt. 27.10.2001 to work on Sunday.	Ex.W28:	Photostat copy of lr. on official duty
Ex.W12:	Photostat copy of Guest staying bill	Ex.W29:	Photostat copy of lr. asking the Petitioner to proceed to Karnataka
Ex.W13:	Photostat copy of tour settlement bill	Ex.W30:	Photostat copy of tour settlement bill
Ex.W14:	Photostat copy of Departmental advance lr. by Respondent	Ex.W31:	Photostat copy of stay bill at Karnataka
Ex.W15:	Photostat copy of lr. extending entry permit validity	Ex.W32:	Photostat copy of overstay permission letter
Ex.W16:	Photostat copy of lr. to work extra hours	Ex.W33:	Photostat copy of Tour advance bill
Ex.W17:	Photostat copy of lr. showing statement of attendance of consultants working on consultancy for the m/o April, 2002	Ex.W34:	Photostat copy of lr. dt. 26.9.2008
		Ex.W35:	Photostat copy of attendance statement
		Ex.W36:	Photostat copy of permission to FAG accounts
		Ex.W37:	Photostat copy of tour advance letter
		Ex.W38:	Photostat copy of attendance statement
		Ex.W39:	Photostat copy of extra hours permission letter
		Ex.W40:	Photostat copy of on duty permission slip
		Ex.W41:	Photostat copy of BARC entry pass
		Ex.W42:	Photostat copy of tour settlement bill
		Ex.W43:	Photostat copy of BARC guest house bill
		Ex.W44:	Photostat copy of lr. to go to BARC on official duty
		EX.W45:	Photostat copy of attendance statement
		Ex.W46:	Photostat copy of lr. to Police Station for verification of Petitioner's conduct for entry to BARC
		Ex.W47:	Photostat copy of lr. about visit to BARC
		Ex.W48:	Photostat copy of claim of TA & DA

Ex.W49: Photostat copy of claim of TA & DA
 Ex.W50: Photostat copy of BARC entry pass
 Ex.W51: Photostat copy of BARC entry pass
 Ex.W52: Photostat copy of tour settlement bill
 Ex.W53: Photostat copy of late hours stay permit letter
 Ex.W54: Photostat copy of lr. for accommodation to Sri S. Basu, Project Director, Kalpakkam
 Ex.W55: Photostat copy of tour advance application
 Ex.W56: Photostat copy of lr. for grant of TA & DA
 Ex.W57: Photostat copy of permission lr. to proceed to Kalpakkam
 EX.W58: Photostat copy of work completion letter
 EX.W59: Photostat copy of tour extension letter
 EX.W60: Photostat copy of tour settlement bill
 Ex.W61: Photostat copy of guest house bill
 EX.W62: Photostat copy of official permission lr. to go to ETDC
 Ex.W63: Photostat copy of settlement of Departmental advance
 Ex.W64: Photostat copy of request for Departmental advance
 Ex.W65: Photostat copy of tour advance application
 Ex.W66: Photostat copy of tour settlement bill
 Ex.W67: Photostat copy of guest house staying bill
 Ex.W68: Photostat copy of late hours permission letter
 Ex.W69: Photostat copy of lr. to work on 26.1.2005
 Ex.W70: Photostat copy of late hours permission and statement
 Ex.W71
 To
 Ex.W83: Photostat copies of late hours permission letters
 Ex.W84: Photostat copy of attendance statement
 EX.W85: Photostat copy of lr. for late hours stay permission
 Ex.W86: Photostat copy of paper notification
 Ex.W87: Photostat copy of paper notification
 Ex.W88: Photostat copy of schedule of training programme of the securities
 Ex.W89: Photostat copy of attendance

Ex.W90: Photostat copy of permission letter
 Ex.W91: Photostat copy of list of candidates sent for safety training
 Ex.W92: Photostat copy of list of candidates sent for safety training
 Ex.W93: Photostat copy of list of candidates to work on Sundays

Documents marked for the Respondent

Ex.M1: Authorization letter dt. 4.9.2013
 Ex.M2: Photostat copy of purchase order dt. 20.6.2002
 Ex.M3: Photostat copy of termination order of services dt. 4.4.2005

नई दिल्ली, 4 जनवरी, 2016

का.आ. 58.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 12/01/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 04/01/2016 को प्राप्त हुआ था।

[सं. एल-22012/178/2013-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 4th January, 2016

S.O. 58.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 12/2014) of the Central Government Industrial Tribunal/Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL, Nandan Washery, Kanhan Area, and their workman, which was received by the Central Government on 04/01/2016.

[No. L-22012/178/2013-IR(CM-II)]
 RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/12/2014

General Secretary,
 Samyukta Koyla Mazdoor Sangh (AITUC),
 Eklehra Central Office Pench/ Kanhan,
 B-Type, Penchvelly Schooe, Parasia,
 Chhindwara ...Workman/Union

Versus

Dy. General manager (E&M), Washery,
WCL, Nandan Washery, Kanhan Area,
PO Damua,
Distt. Chhindwara (MP).
Chhindwara

...Management

AWARD

Passed on this 3rd day of December 2015

1. As per letter dated 28-1-14 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-22012/178/2013-IR(CM-II). The dispute under reference relates to:

“Whether the demand of the Union for quashing and setting aside the impugned office order dated 23-2-2013 issued by the Office of General Manager (Washery) WCL, Nandan Washery, Kanhan Area, PO Damua, Distt. Chhindwara (MP) regarding the cancellation of the promotion of S/Shri Vijay Kumar, C.L.Dubey, Diwakar, Bharatlal, Ravindran and Anand from the post of Operator cum Fitter T&S Grade C as per NCWA-IX to the post of Operator Cat-VI is legal, valid and justified? If not, to what relief the workmen are entitled to and from which date?”

2. After receiving reference, notices were issued to the parties. Ist party Union submitted statement of claim on 22-4-2014.

3. 2nd party filed Written Statement on 16-10-2014 opposing claim of Ist party.

4. Application is filed by management on 16-11-2015 for disposing the reference in terms of settlement. The copy of settlement between Union and management dated 15-11-2015 is produced. General Secretary, Ramkhera Yadav and Management's representative Shri Amit Mahato, Dy. Manager was present and admits said settlement. In view that the dispute between parties is amicably settled as per settlement dated 5-11-2015. No Dispute Award is passed. No order as to costs.

5. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R.B. PATLE, Presiding Officer

नई दिल्ली, 4 जनवरी, 2016

का.आ. 59.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 139/1996) को प्रकाशित करती है जो केन्द्रीय सरकार को 04/01/2016 को प्राप्त हुआ था।

[सं. एल-22012/433/1995-आईआर (सी-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 4th January, 2016

S.O. 59.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 139/1996) of the Central Government Industrial Tribunal/Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SECL, Sohagpur Area, and their workman, which was received by the Central Government on 04/01/2016.

[No. L-22012/433/1995-IR(C-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/139/96

Shri Babbulal,
S/o Shri Nandu,
Ex.Clipman, Gram Dhanpura
Post Bartara,
Distt. Shahdol (MP)

...Workman

Versus

General Manager,
Sohagpur Area, SECL,
Post Dhanpuri,
Distt. Shahdol

...Management

AWARD

Passed on this 27th day of November 2015

1. As per letter dated 7-6-96 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-22012(433)/95-IR(C-II). The dispute under reference relates to:

“Whether the action of the Manager, Navgaon Project of Sohagpur Area of SECL in dismissing Shri Baboolal S/o Nandu, Clipman Cat-IV, Navgaon project w.e.f. 1-4-94 is legal and justified? To what relief the workman concerned is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 4/1 to 4/2. Case of workman is that he was appointed as General Mazdoor in Amlai Colliery against vacant post on 23-8-78. His services are covered by standing orders and Service rules Regulations applicable to SECL employees. In 1982, he was promoted to the post of clipman. In 1990, he was transferred to Navgaon Project. He continuously worked in SECL from 1979 to 1993 holding

Token No. 203. He got status of permanent employee. His services are covered by standing orders and Service rules Regulations of SECL. He further submits that he was suffering from illness i.e. primary symptoms of TB. He was under treatment from 1-2-93 to 27-1-94. Medical Certificate was issued by Dr. P.C.Singhai about his fitness. After attaining fitness, the workman reported for assuming duty. Management in spite of allowing workman to resume duty initiated for remaining unauthorisely absent during November 1992 to December 1993. Workman submits that he was not given opportunity for his defence in Enquiry Proceedings. Medical Certificate issued by Doctor was disbelieved. On such grounds, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at Page 6/1 to 6/3 opposing claim of workman. 2nd party not disputed that workman was initially appointed in Amlai Colliery from 23-8-79. Workman was promoted in 1992. Thereafter workman was transferred to Navgaon underground Mine No.1. Workman was habitual absentee, he remained absent without intimation, permission or sanctioned leave on various occasions. Chargesheet was issued to workman. Punishment of warning was imposed against him. No serious action was taken against him in the past to provide him opportunity to improve. Workman did not show any improvement in his conduct. He remained unauthorisely absent from duty from November 1992 to December 1993. Chargesheet was issued to workman. Reply given by workman to chargesheet was found not satisfactory. The management decided to conduct DE against him. Workman participated in enquiry conducted against him. Enquiry was conducted following principles of natural justice. Enquiry Officer submitted his report holding workman guilty of the charges. The Competent Authority after receiving report of Enquiry Officer examined the report and assessing the evidence punishment of dismissal was imposed as per order dated 1-4-94. Management submits that enquiry was conducted following principles of natural justice. If enquiry is found vitiated, management be given permission to prove misconduct. 2nd party reiterates that management is management is providing various facilities to its employees, free accommodation, fare, electricity, pre-medical aid. Management has established dispensaries at colliery level. Central hospital is functioning at Shahdol. Workman had not received treatment for colliery hospital, sick certificate was not produced. Workman did not informed about his illness of the management. Workman was dismissed after report of Enquiry Officer that the charges alleged against workman are proved. On such ground, 2nd party prays for rejection of claim.

4. As per order dated 26-6-2014, enquiry conducted against workman is found proper and legal. Considering findings on preliminary issue and pleadings between parties, the points which arise for my consideration and

determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|---|
| (i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings? | Misconduct of unauthorized absence under Clause 26.30 is proved, charge of habitual absence not proved. |
| (ii) Whether the punishment of dismissal imposed against workman is proper and legal? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

5. As per order dated 26-1-201, enquiry is found legal. The question whether charges alleged against workman of habitual absence under clause 26.24, unauthorized absence under Clause 26.30 are proved requires to be decided from evidence in Enquiry Proceedings. The documents produced by management Exhibit M-1 is chargesheet of unauthorized absence from November 1992 to December 1993 is alleged. Exhibit M-2 is order of appointment of Enquiry Officer Shri A.N.Bhattacharya and management representative Abhay Kumar. Exhibit M-3 is notice of enquiry. Exhibit M-4 is application submitted by workman for joining duty. Exhibit M-5 is notice of enquiry. Enquiry Proceedings is recorded at page 12/10. Workman was present. Workman has admitted absence from duties. As he was suffering from illness, he could not inform management. He was residing 14 Kms away from Navgaon mine. The Post Office was at 8 kms distance. Exhibit M-7 is medical certificate issued by Dr. P.C.Singhai that workman was receiving treatment under him from 1-4-93 to 27-1-94. Workman was fit for resuming duties. The evidence of Dr.Singhai was recorded on commission. From his evidence, it is clear that Medical Certificate was received by him. During course of argument, learned counsel for workman Shri S.Mishra submits that workman was continuously absent from 1-2-92 to 27-1-94. There is no evidence. Workman was absent from duty prior to said period. Shri S.Mishra submits that the charge of habitual absence under clause 26.24 of standing order cannot be proved. Workman had not submitted prior application for it. The leave was not sanctioned. Charge of unauthorized absence under Clause 26.30 of standing order can be proved from evidence in Enquiry Proceedings.

6. Shri A.K.Shashi for management drawn my attention to chargesheet Exhibit M-1. The Medical Certificate Exhibit M-7 was submitted by workman for joining the duties. Workman was reported fit by Doctor for joining duty. Workman had not submitted application for leave alongwith Medical Certificate. Workman not received treatment in hospital of colliery. Medical Officer

do not issue certificate for sick leave. The original record of enquiry is produced. Considering the workman had admitted his absence from duty, he had not submitted application for sick leave, management was not informed about his absence from duty for the period 1-2-93 to 27-1-94.

7. Shri A.K.shashi relied on ratio held in

Case of Vivekanand Sethi versus Chairman J&K Bank Ltd. and others reported in 2005(5) SCC-337. Their Lordship held the applications for grant of medical leave without annexation of proper medical certificates are period of leave are over could not be considered as nobafide act on part of appellants.

In present case, workamn has not submitted application for leave. Medical Certificate M-7 was submitted only at time of joining duty. Workman had not intimated management neither submitted leave application. The ratio cannot be beneficially applied to case at hand.

The absence of workman from duty was unauthorized but there is not evidence about his absence from duty prior to above said period. The charge of unauthorized absence under clause 26.24 cannot be established. For reasons discussed above, I record my finding in Point No.1 accordingly.

8. Point No.2- In view of my finding in Point No.1 charge of unauthorized absence against workman is proved. The charge of habitual absence under Clause 26.24 of standing order is not proved from evidence in Enquiry Proceedings. Punishment of dismissal is imposed against workman. During Enquiry proceedings, the workman had given explanation he was suffering from illness. The Medical Certificate Exhibit M-7 also shows that workman was receiving treatment under Dr. P.C.Singhai. The explanation given by workman pertains to his illness that he had not informed management about his absence from duty. Workman was not granted leave for above said period.

9. Workman in his evidence on other issues says he was dismissed for unauthorized absence. The punishment of dismissal imposed against him is excessive. That Indramani Budeshwar who were also absent from duty were continued in employment. Workman in his cross says what action was taken against Indramani, Budeshwar by the department for absence from duty was not known to him. When he was in service, he was rendering in own house. He does not own agricultural lands. His family consists of 3 sons and 3 daughters. His sons are working as labours but they reside separately. 3 daughters are married after termination of his service. That he resides in the temple. Considering charge of unauthorized absence for the period 1-2-93 to 27-1-94 is proved, workman was engaged as General Mazdoor on 23-8-78 in Amlai colliery. He was promoted as clipman in 1982. Workman was

transferred to Navgaon Project. The workman was terminated as per order dated 1-4-94. Workman completed about 15 years service. The punishment of dismissal imposed against workman for above said period of unauthorised absence appears excessive. The period of service rendered by workman was not taken into consideration. In my view, punishment of dismissal is not justified.

10. Learned counsel for 2nd party Shri A.K.Shashi relies on ratio held in case between

Smt Padma and others versus Chief Traffic Manager, Bangalore. My attention was pointed out to Para 5,6,9,11 of the judgment. In Para-9 of the judgment, their Lordship discussed Having perused the contents of the documents, there is overlapping of the period of absence, whence the workamn is said to be under treatment. In one certificate, it is stated that the workman was fit to resume duty on 24-2-05, while in the other it is stated that he is fit to resume duty on 23-3-05. From Exhibit M-9 what can be ascertained is that the workamn was fit for duty on 24-3-05 while the other two medical records disclose that he was fit for duty on 21-7-05 and 16-12-05. These medical certificates are not supported by prescriptions, bills or medical records maintained by the hospitals, much less the testimony of the doctors who treated the workam during the said period. In the backdrop of these the Labour court having recorded a finding that the medical certificates were not credible evidence to establish absence due to medical treatment cannot be found fault with.”

In para-11 their Lordship observed the matter of alleged medical treatment at the PHC centres and the K.C.General Hospital. Mere production of certificates of the PHC Centre and Photostat copies of certificates said to be issued by K.C.General hospital by themselves and nothing more donot constitute substantial legal evidence.

In present case, facts are different. Medical Certificate Exhibit M-7 is admitted by Ist party. Medical Certificate is also proved from evidence of documents. Therefore the ratio held in case cannot be beneficially applied to case at hand. As only charge of unauthorised absence is proved and charge of habitual absence is not proved, the punishment of dismissal is excessive. Considering period of service, punishment of dismissal deserves to be modified to compulsory retirement. Accordingly I record my finding in Point No.2.

11. In the result, award is passed as under:-

- (1) The action of the Manager, Navgaon Project of Sohagpur Area of SECL in dismissing Shri Baboolal S/o Nandu, Clipman Cat-IV, Navgaon project w.e.f. 1-4-94 is not proper and legal.

(2) Punishment of dismissal imposed on workman is illegal. Punishment of dismissal is modified to compulsory retirement.

R.B. PATLE, Presiding Officer

नई दिल्ली, 4 जनवरी, 2016

का.आ. 60.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अवीवा लाईफ इयोरेंस कं. इंडिया लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, एरनाकुलाम पंचाट (संदर्भ सं. 12/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 01/01/2016 को प्राप्त हुआ था।

[सं. एल-17011/11/2013-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 4th January, 2016

S.O. 60.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 12/2014) of the Central Government Industrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Aviva Life Insurance Co. India Ltd. and their workman, which was received by the Central Government on 01/01/2016.

[No. L-17011/11/2013-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL

TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri. K. Sasidharan, B.Sc., LLB, Presiding Officer

(Wednesday the 16th day of December, 2015/
25th Agrahayana, 1937)

ID 12/2014

- Union : 1. The General Secretary,
New Generation Banks &
Insurance Staff Association
(CITU), Maruthi Vilas,
Canon Shed Road,
Kochi (KERALA) – 682001
By Adv. Shri C. Anil Kumar
- Additional Party : 2. Shri Maju A.S.,
Alayathu House,
Arepparambu P.O., Kottayam
(Impleaded as additional party on
07.12.2015 vide Order dated
04.12.2015 in I.A. No.151/2015)
By Adv. Shri Arun Prasanth C

Management : The Chief Executive Officer,
Aviva Life Insurance Co. India
Ltd., DLF Course Road, Gurgaon,
New Delhi

By Adv. Shri Saji Isaac K.J

This case coming up for final hearing on 10.12.2015 and this Tribunal-cum-Labour Court on 16.12.2015 passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India/Ministry of Labour vide its Order No-L-17011/11/2013-IR(M) dated 20.02.2014 referred the industrial dispute scheduled thereunder for adjudication to this tribunal.

2. The dispute is:

“Whether the action of the management of Aviva Life Insurance Co. India in imposing suspension on Sh. Maju A.S. and also not paying benefits like subsistence allowance to her during the period of suspension are justified? If not, to what relief he is entitled?”

3. After receiving the reference Order No.L-17011/11/2013-IR(M) dated 20.02.2014, summons was issued to the parties to appear and answer all the material questions relating to this dispute and to produce all necessary documents to substantiate their contentions. On receipt of the summons the union appeared through counsel and filed claim statement. In claim statement filed by the union it is stated that the workman ShriMaju A S was kept under suspension by the management without following the procedures required for a disciplinary action and hence he is entitled to get subsistence allowance during the period of suspension from 27.05.2011.

4. The management disputed the claim of the union. They have stated that Shri Maju A S is not a workman as defined under the Industrial Disputes Act, 1947; that he was employed as a sales manager in the managerial/administrative and supervisory capacity and that he was responsible for effective office management of the branch. The management has stated that this tribunal has no jurisdiction to entertain the dispute referred for adjudication. They have stated that Shri Maju A S is not entitled to get subsistence allowance; that he has violated the company's code of business ethics; that he has physically assaulted and threatened his colleague. They have stated that on basis of the enquiry conducted, the management decided to terminate his services. It is stated that the termination letter was not issued due to the pendency of this case.

5. Union filed rejoinder affirming the contention that the workman involved in this case will come under the purview of Section 2(s) of the Industrial Disputes Act, 1947 and hence this tribunal has got jurisdiction to adjudicate the dispute referred.

6. After filing the replication by the union the matter was posted for steps if any, and for production of documents. Thereafter, the matter was posted for evidence. At the stage of evidence the learned counsel for the union filed a memo reporting no instructions from the union. Hence that aspect was recorded and the union was called absent and set exparte. In the meantime, I.A.151/2015 was filed by the affected person ShriMaju. A.S, and sought permission to implead him as an additional party in this matter. The application was allowed and he was impleaded as an additional party in this proceeding. Shri Maju. A.S filed a memo to the effect that the matter in issue has been settled amicably out of court between him and the management and he is relinquishing all claims raised against the management in this case. He has requested to pass an award to the effect that there is no subsisting industrial dispute to be adjudicated by this Tribunal.

7. Copy of this memo was given to the counsel for the management.

8. Thereafter the matter was heard in presence of the learned counsel for the additional party and the learned counsel for the management.

9. The issue referred for adjudication before this tribunal is:

“Whether the action of the management of Aviva Life Insurance Co. India in imposing suspension on Sh. Maju A.S. and also not paying benefits like subsistence allowance to her during the period of suspension are justified? If not, to what relief he is entitled?”

10. The affected party in this dispute i.e., ShriMaju A.S has filed a memo to the effect that the dispute involved in this matter has been amicably settled between him and the management and hence he is relinquishing all claims against the management. In view of the memo filed by the affected party in this matter, it is held that there is no subsisting industrial dispute for adjudication in this reference. The reference is answered accordingly.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 16th day of December, 2015.

SASIDHARAN K., Presiding Officer

APPENDIX - NIL

नई दिल्ली, 4 जनवरी, 2016

का.आ. 61.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सामान्य उद्योग निगम लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ पंचाट (संदर्भ संख्या 22, 23, 24, 25, 26, 27, 28, 29/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 01/01/2016 को प्राप्त हुआ था।

[सं. एल-29012/23/2010-आईआर (एम),
एल-29012/26/2010-आईआर (एम),
एल-29012/27/2010-आईआर (एम),
एल-29012/25/2010-आईआर (एम),
एल-29012/24/2010-आईआर (एम),
एल-29012/22/2010-आईआर (एम),
एल-29012/21/2010-आईआर (एम),
एल-29012/20/2010-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 4th January, 2016

S.O. 61.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 22, 23, 24, 25, 26, 27, 28, 29/2011) of the Central Government Industrial Tribunal/Labour Court-1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. General Industrial Corporation Ltd. and their workman, which was received by the Central Government on 01/01/2016.

[No. L-29012/23/2010-IR(M),
L-29012/26/2010-IR(M),
L-29012/27/2010-IR(M),
L-29012/25/2010-IR(M),
L-29012/24/2010-IR(M),
L-29012/22/2010-IR(M),
L-29012/21/2010-IR(M),
L-29012/20/2010-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

**BEFORE SHRI SURENDRA PRAKASH SINGH,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-I,
CHANDIGARH**

Case No. ID No.22,23,24,25,26,27,28,29 of 2011, (8 references) as per detail given below:

(1). ID 22 of 2011: Ram Lal Vs. The Managing Director, General Industrial Corporation Ltd. Himrus Building, Card Road Shimla-1HP.

Reference No. L-29012/23/2010-IR(M) dated 25.11.2011

Whether the action of the Managing Director, General Industrial Corporation Ltd. Shimla for not regularizing the services of workman Shri Ram Lal son of Shri Bhona Ram who have put in 18 years of service at Kogi Mining Project as per the guidelines issued by the Govt. of HP is just, fair and legal? To what relief the workman is entitled?"

(2). ID 23 of 2011: Parkash Chand Vs. The Managing Director, General Industrial Corporation Ltd. Himrus Building, Card Road Shimla-IHP.

Term of Reference Reference No. L-29012/26/2010-IR(M) dated 25.11.2011:

Whether the action of the Managing Director, General Industrial Corporation Ltd. Shimla for not regularizing the services of workman Shri Parkash Chand son of Shri Bakshi Ram who have put in 18 years of service at Kogi Mining Project as per the guidelines issued by the Govt. of HP is just, fair and legal? To what relief the workman is entitled?"

(3). ID 24 of 2011: Baldev Singh Vs. The Managing Director, General Industrial Corporation Ltd. Himrus Building, Card Road Shimla-IHP.

Term of Reference No. L-29012/27/2010-IR(M) dated 25.11.2011

Whether the action of the Managing Director, General Industrial Corporation Ltd. Shimla for not regularizing the services of workman Shri Baldev Singh son of Shri Bhona Ram who have put in 17 years of service at Kogi Mining Project as per the guidelines issued by the Govt. of HP is just, fair and legal? To what relief the workman is entitled?"

(4). ID 25 of 2011: Dharam Singh Vs. The Managing Director, General Industrial Corporation Ltd. Himrus Building, Card Road Shimla-IHP.

Term of Reference: Reference No. L-29012/25/2010-IR(M) dated 25.11.2011

Whether the action of the Managing Director, General Industrial Corporation Ltd. Shimla for not regularizing the services of workman Shri Dharam Singh son of Shri Bhagi Rath who have put in 14 years of service at Kogi Mining Project as per the guidelines issued by the Govt. of HP is just, fair and legal? To what relief the workman is entitled?"

(5). ID 26 of 2011: Krishnu Ram Vs. The Managing Director, General Industrial Corporation Ltd. Himrus Building, Card Road Shimla-IHP.

Term of Reference: Reference No. L-29012/24/2010-IR(M) dated 25.11.2011

Whether the action of the Managing Director, General Industrial Corporation Ltd. Shimla for not regularizing the services of workman Shri Krishnu Ram son of Shri Sukhiya Ram who have put in 14

years of service at Kogi Mining Project as per the guidelines issued by the Govt. of HP is just, fair and legal? To what relief the workman is entitled?"

(6). ID 27 of 2011: Prashant Samwal Vs. The Managing Director, General Industrial Corporation Ltd. Himrus Building, Card Road Shimla-IHP.

Term of Reference: Reference No. L-29012/22/2010-IR(M) dated 25.11.2011

Whether the action of the Managing Director, General Industrial Corporation Ltd. Shimla for not regularizing the services of workman Shri Prashant Samwal son of Shri Majra Ram who have put in 18 years of service at Kogi Mining Project as per the guidelines issued by the Govt. of HP is just, fair and legal? To what relief the workman is entitled?"

(7). ID 28 of 2011: Nikka Ram Vs. The Managing Director, General Industrial Corporation Ltd. Himrus Building, Card Road Shimla-IHP.

Term of Reference: Reference No. L-29012/21/2010-IR(M) dated 25.11.2011

Whether the action of the Managing Director, General Industrial Corporation Ltd. Shimla for not regularizing the services of workman Shri Nikka Ram son of Shri Johla Ram who have put in 17 years of service at Kogi Mining Project as per the guidelines issued by the Govt. of HP is just, fair and legal? To what relief the workman is entitled?"

(8). ID 29 of 2011: Prem Lal Vs. The Managing Director, General Industrial Corporation Ltd. Himrus Building, Card Road Shimla-IHP.

Term of Reference: Reference No. L-29012/20/2010-IR(M) dated 25.11.2011

Whether the action of the Managing Director, General Industrial Corporation Ltd. Shimla for not regularizing the services of workman Shri Prem Lal son of Shri Mahnu Ram who have put in 18 years of service at Kogi Mining Project as per the guidelines issued by the Govt. of HP is just, fair and legal? To what relief the workman is entitled?"

APPEARANCES

For the workmen : Shri R.K. Singh.

For the management : Shri G. S. Sandhu, Advocate.

AWARD

Passed on 14.12.2015

1. All the above eight references mentioned above are similar in nature as the facts of all the cases are same and references referred to this Tribunal are also similar. In all the above references, the workmen claiming benefits on the basis of policy of H.P. Govt. All the references are taken together and are being answered by joint award.

2. The workmen in claim statements submitted that they were employed on different posts on daily wages with the management and there were no complaint against their work and conduct during the entire period. It is further pleaded that the management itself had admitted that in view of the policy HP State had regularised the services of daily labourer Shri Chet Ram. It is further pleaded that position of all the workers were the same but they had been ignored from regularization. The management has violated the instructions of H.P. Govt. vide letter dated 6-5-2000 and this Scheme was also approved by the Hon'ble Supreme Court and By the Hon'ble High Court. It is prayed by the workmen that they all covered by the above scheme of H.P.Govt. and entitled for regularisation and arrear of pay, allowances and other perks admissible to the work charged employees after 8 years completion and regularisation after completion 10th years as per the scheme also.

3. The management filed written statement. Preliminary objection has been taken that there was no dispute in existence on the date of reference in as much as the subject matter of the reference under adjudication was duly settled by virtue of settlement dated 18-5-1996 between the parties before the Conciliation Authority i.e. A.L.C(C) which is condition precedent for reference under section 10 of the I.D.Act 1947. On merits it is admitted that Chet Ram was regularised as driller w.e.f. 1-9-1999 not from 1-4-1990 and it is denied that position of all the workers were the same as in the reference of co-worker. It is also denied that they have been ignored from regularisation. The Policy of H.P.Govt.dated 6-5-2000 are simply the guide lines for stream lining the procedure of regularisation. It is further pleaded that in accordance with the state govt. instructions issued from time to time management created required number of posts and regularised 26 and one daily wage worker. The management had to close down the mining project at Bilaspur and worker were rendered surplus and due to non availability of posts the eligible worker could not be regularised. The Govt. vide circular dated 11-7-1995 ordered for regularisation of daily wage workers who completed 10 years or more continue service with 240 days (minimum) in a calendar year as on 31-3-1995 w.e.f. 1-4-1995 subject to availability of posts . As a result of regularization of these workers, their wages increased 2.5 times which resulted in corresponding increase in cost of production of the products of the corporation. Consequently, the operation becomes unviable and the Corporation had to close down the activity of Lime Stone extraction at Mining project Bilaspur. It is further pleaded that the workmen were neither eligible for grant of work charge status nor the management has any vacancy. In the similar circumstances this Hon'ble court vide award dated 20-6-2008 held that action of the management in not regularising the services of their employees working on daily rates post in their Kogi and Delag mines in Distt. Bilaspur having services of 10 years and more is just and

legal. The management prayed that reference is devoid of merit and same may be dismissed.

4. In all the cases workmen filed their respective affidavits in evidence. The management also filed affidavit of one Sh. R.S.Singha manager of the corporation who was examined and cross-examined by the representative of the workmen. He admitted in cross examination that the policy of the Govt. has been adopted by the management and the regularisation of the workmen was done under the Govt. Policy.

5. I have heard the parties and gone through the evidence and record.

6. The learned representative of the workmen submitted that though all the above workmen were regularised now but not as per the policy of the H.P.Govt. The Policy dated 6-5-2000 was not strictly adhered to by the management in as much as the workers were not regularised on completion of 8 and 10 years of daily wage service. On the other hand learned counsel for the management submitted that workers were regularised on the availability of vacancy as per the policy.

7. The witness of the management Shri R.S.Singha manager of the corporation in his affidavit mentioned that the services of the petitioners have already been regularized by the Govt. departments on the posts of peon in the regular pay scale with effect from the different dates, therefore, the claim of the petitioners have become infructuous. In his statement before this Tribunal, Shri R.S.Singha has also stated that there is independent policy of the management corporation. The policy of the Govt. has been adopted by the management corporation. The regularization of the workmen was done under the Govt. policy. In the case of State of Himachal Pradesh and other and Gehar Singh (2003) 113 F.L.R 434, the Hon'ble Supreme Court has mentioned the fresh policy issued on 6.5.2000 by the State Govt. on there gularization of daily wage/contingent paid workers which provided that eligible daily wage workers/contingent paid works would be considered for regularisation against vacant posts or by creation of fresh posts with the prior approval of the finance department and that such regularization in all cases would be with prospective effect. It was also stipulated that in future even in the Public Works Department and Irrigation and Public Health Department, regularisation/bringing daily wagers on work charged category would also be with prospective effect as in other departments.

8. In the case in hand all the above workmen were working in Kogi Mines Project and for their regularisation, posts were created in various departments and all the workmen have been regularized as per policy of the Himachal Pradesh Government and all the workmen are getting the regular pay scale plus admissible allowances. The Govt. has expressed its keen sense of responsibility by creating the posts in various departments and by regularising the workmen.

9. In a similar case this Tribunal in ID No. 77/96, General Secretary, Kogi Karamchari Sangh, Vs. Managing Director, HP General Industry Corporation Ltd. vide its award dated 20.6.2008 answered the reference. (Copy of the award has been placed by the management on the file).

10. Thus considering all the facts and circumstances of the case and considering the references mentioned above referred by the Central Govt. which pertains to the regularisation of the workmen, admittedly as the management have already regularised the services of all the workmen and all the workmen are getting regular pay scale and allowances as admissible as admitted by the parties, therefore, the references are disposed off accordingly.

11. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication. A copy of this award be placed on each reference file as mentioned above.

Chandigarh.

14.12.2015

S. P. SINGH, Presiding Officer

नई दिल्ली, 4 जनवरी, 2016

dk-vk. 62.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जयपुर के पंचाट (संदर्भ सं. 130/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 04.01.2016 को प्राप्त हुआ था।

[सं. एल-12011/139/2005-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 4th January, 2016

S.O. 62.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 130/2005) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jaipur as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workman, received by the Central Government on 04/01/2016.

[No. L-12011/139/2005-IR(B-II)]

RAVI KUMAR, Desk Officer

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भरत पाण्डेय, पीठासीन अधिकारी

jQjll ua-L-12011/139/2005-IR (B-II) fnukd

07.11.2005

The General Secretary,

Association of P.N.B. Employees, C-13, Ojhaji ka Bagh,

Gandhi Nagar Mod, Tonk Road

Jaipur (Rajasthan)

v/s

The Zonal Manager,

Punjab National Bank

2, Nehru Place, Tonk Road,

Jaipur – Rajasthan

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दिनांक : 30.10. 2015

1. केन्द्रीय सरकार द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 10 उपधारा 1 खण्ड (घ) के अन्तर्गत दिनांक 07/11/2005 के आदेश से प्रेषित विवाद के आधार पर यह प्रकरण न्यायनिर्णयन हेतु संस्थित है। केन्द्रीय सरकार द्वारा प्रेषित विवाद निम्नवत् है :-

2. “Whether the action of the management of Punjab National Bank through Zonal Manager, Jaipur in re-fixing the pay and initiating recovery from the pay in respect of Armed/Security Guard employed by the bank in Rajasthan State vide Circular No. 43/94 dated 12.12.94 is Justified? If not, what relief the workmen are entitled to and from which date?”

3. याचिका में दिये गये तथ्यों के अनुसार संक्षिप्ततः याची का कथन है कि रक्षा सेवा से सेवानिवृत्त हुए कई कर्मचारियों को विपक्षी बैंक ने सन् 1985 और उसके बाद सशस्त्ररक्षक/गार्ड कम प्यून के पद पर नियुक्ति दी थी और इन कर्मचारियों का वेतन निर्धारण विपक्षी बैंक द्वारा जारी परिपत्र क्रमांक पी. डी. 953 दिनांक 21.8.1986 के आधार पर किया गया था। तत्पश्चात् विपक्षी बैंक के कर्मिक विभाग द्वारा एक परिपत्र 43/94 दिनांकित 12.12.1994 निर्गत किया गया जिसके अनुसार दिनांक 13.3.92 से उक्त भूतपूर्व सैनिकों के वेतन निर्धारण का तरीका बदलते हुए सशस्त्ररक्षक/गार्ड कम प्यून का पुनः वेतन निर्धारण कर वेतन कम कर दिया गया तथा उसकी वसूली के आदेश भी जारी कर दिये गये। विपक्षी बैंक द्वारा जारी परिपत्र 43/94 दिनांकित 12.12.1994 के विरुद्ध याची, एसोसिएशन आफ पंजाब नेशनल बैंक एम्प्लाइज राजस्थान, जयपुर ने माननीय राजस्थान उच्च न्यायालय के समक्ष रिट याचिका एस.बी. सिविल रिट पिटीशन न. 115/96 प्रस्तुत की जो दिनांक 06.11.2000 को माननीय उच्च न्यायालय द्वारा स्वीकार की गयी।

4. याचिका संख्या 115/96 को याची द्वारा माननीय उच्च न्यायालय में प्रस्तुत करने के पूर्व विपक्षी बैंक के एक आर्म्ड गार्ड श्री प्रेमसिंह ने रिट याचिका 1722/95 माननीय उच्च न्यायालय के समक्ष प्रस्तुत की थी जो दिनांक 24.8.2000 को स्वीकार की गयी एवं विपक्षी बैंक द्वारा जारी आदेश

निरस्त कर दिया गया। तत्पश्चात् विपक्षी बैंक के आंचल कार्यालय ने बैंक की विभिन्न शाखाओं को एक पत्र कमांक अ/स्टाफ/रिट/204 दिनांकित 03.04.2001 लिखकर निर्देशित किया कि जिन कर्मचारियों का नाम रिट याचिका 115/96 में शामिल था “उनसे अगर कोई राशि परिपत्र के अनुसार वसूल की गई हो तो उन्हें वापस कर दी जाय एवं उक्त परिपत्र जारी होने से पूर्व के अनुसार जो वेतन दे रहे थे, उसका भुगतान जारी रखा जाय।” आंचल कार्यालय द्वारा निर्गत उक्त पत्र दिनांक 3.4.2001 के आधार पर नौ कर्मचारियों को दिनांक 12.12.94 के परिपत्र के आधार पर वसूली गई धनराशि वापस कर दी गई और परिपत्र जारी करने के पूर्व जो वेतन उन्हें मिल रहा था वहीं वेतन दिया जाने लगा। शेष सशस्त्ररक्षक/गार्ड कम प्यून को दिनांक 12.12.1994 के आधार पर वसूली गई राशि न तो वापस लौटायी गयी और न ही उनको पूर्व में मिल रही धनराशि पुनर्स्थापित की गयी जबकि माननीय उच्च न्यायालय ने परिपत्र दिनांकित 12.12.94 को नैसर्गिक न्याय के सिद्धान्त के विपरीत मानते हुए उसे निरस्त किया था।

5. प्रस्तर 11 में याची ने यह उल्लेख किया है “विपक्षी बैंक में वर्तमान में कुछ सशस्त्ररक्षक/गार्ड कम प्यून ऐसे हैं जिन्हें 21.08.1986 के परिपत्र के आधार पर निर्धारित वेतन मिल रहा है और कुछ को दिनांकित 12.12.94 के परिपत्र के आधार पर पुनर्निर्धारित वेतन मिल रहा है। इस तरह विपक्षी बैंक द्वारा एक ही संवर्ग के कर्मचारियों को भिन्न-भिन्न तरीके से वेतन व भत्ते दिये जा रहे हैं, जो न केवल भेदभाव पूर्ण कार्यवाही है वरन् भारतीय संविधान में प्रदत्त समानता के अधिकार के भी विरुद्ध है।”

6. प्रस्तर 12 में यह उल्लेख किया गया है कि “विपक्षी बैंक में कार्यरत ऐसे ही कुछ सशस्त्ररक्षक/गार्ड कम प्यून ने माननीय पंजाब एवं हरियाणा उच्च न्यायालय के समक्ष रिट याचिकाएं दायर की थी। माननीय पंजाब एवं हरियाणा उच्च न्यायालय की खण्डपीठ ने अपने निर्णय दिनांक 19.08.1999 द्वारा यह निर्णित किया कि विपक्षी बैंक द्वारा जारी परिपत्र दिनांकित 12.12.94 जारी करने से पूर्व प्रभावित श्रमिकों को सुनवाई का अवसर नहीं दिया गया और इस तरह यह आदेश प्राकृतिक न्याय के सिद्धान्तों के विपरीत जारी किया गया है अतः यह परिपत्र निरस्त किये जाने योग्य है।”

7. आगे याचिका में यह कथन है कि माननीय पंजाब एवं हरियाणा उच्च न्यायालय के निर्णय दिनांक 19.8.1999 के विरुद्ध विपक्षी बैंक द्वारा माननीय सर्वोच्च न्यायालय के समक्ष प्रस्तुत विशेष अनुमति याचिका दिनांक 3.3.2003 को निरस्त कर दी गयी। विपक्षी बैंक द्वारा दिनांक 12.12.94 के परिपत्र के अनुपालन में सशस्त्ररक्षक/गार्ड कम प्यून संवर्ग के वेतन का पुनर्निर्धारण करने के पूर्व प्रभावित श्रमिकों तथा याची यूनियन को औद्योगिक विवाद अधिनियम की धारा 9 ए के अन्तर्गत कोई नोटिस नहीं दी गयी और अकेले इस आधार पर ही विपक्षी बैंक द्वारा दिनांक 12.12.94 के परिपत्र के अनुपालन में वेतन निर्धारण अनुचित एवं अवैध है। याचीगण ने निम्न अनुतोष की मांग की है :—

(क) यह कि माननीय न्यायाधिकरण यह घोषित करने की कृपा करें कि विपक्षी बैंक द्वारा जारी परिपत्र दिनांक 12.12.94 अनुचित, अवैध, प्रकृति न्याय के सिद्धान्तों विपरीत एवं औद्योगिक अधिनियम

9ए प्रावधानों की पालना किये बिना जारी किये जाने के कारण निरस्त किये जाने योग्य है।

(ख) यह कि माननीय न्यायाधिकरण यह भी घोषित करने की कृपा करें कि विपक्षी के अधीन बैंक में कार्यरत उन सशस्त्ररक्षक/गार्ड कम प्यून जिनका वेतन परिपत्र दिनांक 12.12.1994 के आधार पर पुनर्निर्धारित किया गया व वसूली के आदेश दिये गये, उनके वेतन पुनर्निर्धारण एवं वसूली के बारे में जारी समस्त आदेश निरस्त किये जाने योग्य है।

(ग) यह कि माननीय न्यायाधिकरण यह भी घोषित करने की कृपा करें कि विपक्षी के अधीन कार्यरत सशस्त्ररक्षक/गार्ड कम प्यून दिनांक 12.12.94 के परिपत्र के आधार पर वेतन पुनर्निर्धारण से पूर्व प्राप्त वेतन व उसमें समय-समय पर हुई वृद्धि के आधार पर मिलने योग्य वेतन व भत्ते प्राप्त करने तथा उनसे वसूल की गयी राशि वापस प्राप्त करने तथा इसके आधार पर उन्हें मिलने योग्य एरियर का भुगतान प्राप्त करने के अधिकारी हैं।”

8. स्टेटमेंट आफ क्लेम के विरुद्ध प्रस्तुत वादोत्तर में याचिका के प्रस्तर 1 के सम्बन्ध में यह कहा गया है कि यूनियन द्वारा याचिका में यह उल्लेख नहीं किया गया है कि क्लेम यूनियन के किन सदस्यों के सम्बन्ध में प्रस्तुत किया गया है। प्रस्तर 2 के कथन को स्वीकार किया गया है। शेष धाराओं में प्रस्तुत कथन को अस्वीकार किया गया है। प्रस्तर 8 व 9 के सम्बन्ध में कहा गया है कि इन धाराओं के कथन अभिलेख पर आधारित है अतः टिप्पणी की आवश्यकता नहीं है। अतिरिक्त कथन में यह कहा गया है कि भूतपूर्व सैनिकों का वेतन निर्धारण भारत सरकार से प्राप्त दिशा निर्देशों के अनुरूप किया जाता है। पूर्व में बैंक में पुनर्नियोजित भूतपूर्व सैनिकों का जो वेतन निर्धारण किया गया था, उसका आधार भी केन्द्रीय सरकार से प्राप्त दिशा निर्देश थे। अतः केन्द्र सरकार ने भूतपूर्व सैनिकों के वेतन निर्धारण हेतु जो सिद्धान्त पूर्व में प्रतिपादित किये थे, उनका अनुपालन किया गया तथा जब इनमें संशोधन/परिवर्तन हेतु केन्द्रीय सरकार से दिशा निर्देश प्राप्त हुये तो उन्हें लागू न किये जाने का कोई औचित्य नहीं है और प्रार्थी यूनियन से भी यह अपेक्षित नहीं है कि जब किसी निर्देशानुसार उसे लाभ हो तो वह उसे स्वीकार कर ले किन्तु यदि उसी प्राधिकारी द्वारा उन दिशा निर्देशों में कुछ संशोधन किया जाय तो वह उस पर आपत्ति प्रदर्शित करें। भारत सरकार से प्राप्त दिशा निर्देशों के अनुरूप जब भूतपूर्व सैनिकों का वेतनमान निर्धारित किया गया तो उसे पूर्व में दिये गये अधिक वेतन भत्तों का सही स्थिरीकरण करते हुये अधिक भुगतान की गयी राशि की वसूली की गयी। आगे यह कहा गया है कि एसोसिएशन ऑफ पंजाब नेशनल बैंक एम्पलाईज राजस्थान, जयपुर द्वारा राजस्थान उच्च न्यायालय के समक्ष जो रिट याचिका संख्या 115/96 प्रस्तुत की थी, उसमें याची यूनियन द्वारा जिन कर्मचारियों के नाम उल्लिखित किये गये थे, उनके सम्बन्ध में माननीय उच्च न्यायालय द्वारा दिये गये निर्देशानुसार कार्यवाही अप्रार्थी बैंक द्वारा कर दी गयी थी। अतः जब प्रार्थी यूनियन द्वारा अपने सदस्यों के वेतन पुनर्स्थिरीकरण के सम्बन्ध में उस समय रिट याचिका दायर कर दी थी, अतः अब प्रार्थी विबन्धन एवं प्राङ्गन्याय के सिद्धान्त पर यह मामला माननीय न्यायालय के समक्ष प्रस्तुत नहीं कर सकता।

9. श्री प्रेम सिंह या एसोसियेशन ऑफ पंजाब नेशनल बैंक एम्पलाईज राजस्थान, जयपुर द्वारा विनिर्दिष्ट कर्मचारियों के ही मामले माननीय उच्च न्यायालय में प्रस्तुत किये गये थे जिसका लाभ केवल उन्हीं कर्मचारियों को देय हो सकता है, जो उस मामले के पक्षकार हो। प्रार्थी यूनियन उस समय अन्य कर्मचारियों के सम्बन्ध में भी न्यायालय में मामला प्रस्तुत करने हेतु स्वतन्त्र थी किन्तु प्रार्थी यूनियन द्वारा उस समय अन्य किसी कर्मचारी के वेतन पुनर्स्थिरीकरण हेतु कोई वाद या क्लेम प्रस्तुत नहीं किया गया था, शेष सभी सेवानिवृत्त सैनिक जिन्हें बैंक में पुनर्नियुक्त किया गया था, इस वेतन पुनर्स्थिरीकरण से सहमत थे। उनका वेतन पुनर्स्थिरीकरण सही किया गया है तथा उन्हें इस पर कोई आपत्ति नहीं है।

10. याचिका के प्रस्तर 6 के विरुद्ध यह कहा गया है कि प्रस्तर 6 में प्रस्तुत कथन श्री प्रेमसिंह से सम्बन्धित है और यूनियन के अन्य सदस्यों से सम्बन्धित नहीं है इसलिये टिप्पणी की आवश्यकता नहीं है। इसी प्रकार प्रस्तर 7 के सम्बन्ध में कहा गया है कि कथित आदेश 6.11.2000 केवल यूनियन के उन्हीं सदस्यों से सम्बन्धित है जो याचिका में पक्षकार रहे हैं। उसका सम्बन्ध यूनियन के शेष सदस्यों से नहीं है इसलिये इस पर टिप्पणी की आवश्यकता नहीं है। प्रस्तर 8 और 9 के कथन के विरुद्ध भी यही बात कही गई है कि प्रस्तुत कथन अभिलेख से सम्बन्धित है इसलिये टिप्पणी की आवश्यकता नहीं है।

11. प्रस्तर 10 के कथन को अस्वीकार करते हुये इसके विरुद्ध यह कहा गया है कि माननीय उच्च न्यायालय द्वारा परिपत्र 43/94 दिनांकित 12.12.1994 को निरस्त नहीं किया गया था। भारत सरकार के निर्देशानुसार भूतपूर्व सैनिकों बैंक द्वारा विशेष भत्ते का भुगतान किया जा रहा था, उनका वेतन पुनर्स्थिरीकरण परिपत्र 43/94 दिनांकित 12.12.1994 द्वारा कर दिया गया था। उक्त कार्यान्वयन किये जाने के पश्चात अब इतने विलम्ब से बिना किसी औचित्य एवं आधार के यूनियन द्वारा प्रस्तुत क्लेम निरस्त होने योग्य है।

12. याचिका के प्रस्तर 11 के सम्बन्ध में कहा गया है कि प्रस्तुत कथन अस्पष्ट, निराधार एवं असत्य होने के कारण अस्वीकार है। आगे यह कहा गया है कि प्रार्थी यूनियन द्वारा उन सदस्यों के नाम का उल्लेख नहीं किया गया है जिनकी तरफ से यह याचिका प्रस्तुत की गयी है और उनका वेतन-विवरण भी नहीं दिया गया है। माननीय उच्च न्यायालय द्वारा यूनियन की याचिका पर पारित आदेश 6.11.2000 के सम्बन्ध में कहा गया है कि माननीय राजस्थान उच्च न्यायालय द्वारा प्रार्थी यूनियन की याचिका में उल्लिखित सदस्यों के अतिरिक्त किसी अन्य सदस्य के वेतन पुनर्स्थिरीकरण के सम्बन्ध में कोई निर्देश नहीं दिये गये थे क्योंकि उनका मामला माननीय उच्च न्यायालय के समक्ष प्रस्तुत ही नहीं किया गया था। प्रार्थी यूनियन द्वारा भी अन्य सदस्यों के सन्दर्भ में वर्ष 1994 में किये गये वेतन पुनर्स्थिरीकरण के सम्बन्ध में कोई भी प्रतिवेदन या क्लेम प्रस्तुत नहीं किया गया है जिससे यह स्वतः स्पष्ट है कि प्रार्थी यूनियन एवं उसके अन्य सदस्यों द्वारा अपना वेतन पुनर्स्थिरीकरण स्वीकार कर लिया गया, अतः अब इतने लम्बे अन्तराल के पश्चात प्रार्थी द्वारा इसे चुनौती देने का न तो विधि एवं न ही साम्य के अन्तर्गत कोई अधिकार है।

13. प्रस्तर 12 और 13 में प्रस्तुत तथ्यों के सम्बन्ध में जानकारी के अभाव में इन्कार किया गया है और प्रस्तर 14 के कथन को अस्वीकार करते हुए यह उल्लेख किया गया है कि औद्योगिक विवाद अधिनियम की धारा 9 ए

का प्राविधान वर्तमान मामले में लागू नहीं होता है इसलिये परिपत्र 43/94 दिनांकित 12.12.1994 के अनुसार वेतन निर्धारण करते समय धारा 9 ए के अन्तर्गत नोटिस देने की आवश्यकता नहीं है एवं याची पक्ष की याचिका सव्यय खारिज होने योग्य है।

14. याची पक्ष द्वारा रिज्वायन्डर प्रस्तुत कर यह कहा गया है कि वादोत्तर आंचल प्रबन्धक, जयपुर ने प्रस्तुत की है लेकिन ऐसा कोई प्रलेख नहीं प्रस्तुत किया गया है जिससे यह जाहिर हो कि वह जवाब प्रस्तुत करने के लिए अधिकृत है, यह भी कहा गया है कि वादोत्तर में उठायी गयी आपत्तियां अनुचित एवं अवैध हैं। आगे यह कहा गया है कि विपक्षी बैंक के कर्मचारियों की सेवा शर्तें एवार्ड/द्विपक्षीय समझौतों के प्रावधानों से शासित है और उनमें ऐसा कोई प्रावधान नहीं है कि भारत सरकार या भारतीय बैंक संघ से प्राप्त दिशा निर्देश कर्मचारियों पर बाध्यकारी होंगे। यह भी कहा गया है कि ऐसे किसी भी दिशा निर्देश/परिपत्र को जिसके द्वारा कर्मचारियों की सेवा शर्तों में अलाभकारी एवं अधिनियम के प्रावधानों के विपरीत परिवर्तन किये गये हो उन्हें चुनौती देने का कर्मचारी/यूनियन को पूर्ण अधिकार है। यह भी कहा गया है कि यूनियन ने यह विवाद सभी आर्म गार्ड के सम्बन्ध में उठाया है, अतः क्लेम में श्रमिकों का नाम अंकित किये जाने की आवश्यकता नहीं है। यह भी कहा गया है कि एसोसियेशन आफ पंजाब नेशनल बैंक एम्पलाईज, राजस्थान द्वारा पूर्व में जो रिट याचिका संख्या 115/1996 दायर की गई थी वह कुछ कर्मचारियों के लिये दायर नहीं की गई थी वरन् उस श्रेणी के सभी कर्मचारियों के के लिये दायर की गई थी। रिट याचिका में यूनियन पक्षकार थी। कोई भी कर्मचारी उसमें व्यक्तिगत रूप से पक्षकार नहीं था।

15. रिज्वायन्डर में यह भी कहा गया है कि यह कहना गलत है कि शेष सभी सेवानिवृत्त सैनिक जिन्हें बैंक में पुनर्नियुक्त किया गया था, वे इस वेतन पुनर्स्थिरीकरण से सहमत थे तथा उनका वेतन पुनर्स्थिरीकरण सही किया गया था व उन्हें इस पर कोई आपत्ति नहीं है। ऐसी कोई सहमति भी माननीय न्यायाधिकरण के समक्ष प्रस्तुत नहीं की गई है। माननीय उच्च न्यायालय द्वारा पूर्व में बैंक के परिपत्र दिनांक 12.12.1994 को निरस्त किया जा चुका है। विपक्षी का यह कथन आधारहीन है कि इस प्रकरण में धारा 9 ए के प्राविधान लागू नहीं होते हैं।

16. रिज्वायन्डर के विरुद्ध विपक्ष द्वारा जवाब दिनांकित 24.5.2006 प्रस्तुत किया गया है जिसमें प्रबन्धक श्री वीरेन्द्र कुमार जैन द्वारा वादोत्तर प्रस्तुत करने के बिन्दु पर उठायी गयी आपत्ति का जवाब दिया गया है। तत्कालीन विद्वान पीठासीन अधिकारी द्वारा दिनांक 20.6.2006 के आदेश से याची पक्ष द्वारा उठायी गयी आपत्ति का निराकरण नकारात्मक रूप में किया गया है।

17. याची पक्ष की तरफ से श्री अनिल कुमार माथुर, महासचिव, एसोसियेशन ऑफ पंजाब नेशनल बैंक एम्पलाईज, राजस्थान, जयपुर का शपथ-पत्र याचिका के समर्थन में साक्ष्य में न्यायाधिकरण के समक्ष प्रस्तुत किया गया है जिनकी प्रतिपरीक्षा विपक्ष द्वारा दिनांक 15.12.2011 को की गयी है।

18. विपक्ष की तरफ से श्री ब्रजेन्द्र बत्रा, वरिष्ठ प्रबन्धक (डी.ए.सी.) की शपथ-पत्र साक्ष्य में प्रस्तुत है जिनकी प्रतिपरीक्षा विपक्ष द्वारा की गयी है।

19. याची पक्ष की तरफ से अभिलेखीय साक्ष्य के रूप में याची की साक्ष्य में प्रस्तुत शपथ-पत्र के साथ पांच अभिलेख प्रस्तुत हैं जिनका उल्लेख शपथ-पत्र में किया गया है। उभयपक्ष द्वारा अपना साक्ष्य समाप्त किया गया।

20. मैंने उभयपक्ष के विद्वान प्रतिनिधिगण की बहस सुनी तथा पत्रावली का सम्यक् अवलोकन किया। विपक्ष की तरफ से लिखित बहस भी प्रस्तुत की गयी है।

21. याची पक्ष की तरफ से निम्न विधिक दृष्टान्त प्रस्तुत किये गये हैं—

1. 1975 (31) F.L.R, Page- 178, MGMT. OF INDIAN OIL CORPORATION LTD.—Appellant V/s. IT'S WORKMEN—

2. 1995 (1) L.L.J., (Supreme Court), Page- 875, Calcutta Electric Supply Corp. Ltd.... Appellant V/s. Calcutta Electric Supply Worker's Union & Ors.Respondents

3. 2003 (97) F.L.R, Page- 1110, DIRECTOR, STATE FARMS CORPORATION OF INDIA LTD. – Appellant V/s. JUDGE, INDUSTRIAL TRIBUNAL AND LABOUR COURT, BIKANER And others — Respondants

4. Judgement & Order Dated – 26.02.2013 IN THE HIGH COURT OF DELHI AT NEW DELHI IN W.P.(C)8447/2008 & C.M. Nos. 16260/2008, 6530/2009, Punjab National Bank.... Petitioner V/s. General, Secretary, PNB WORKERS ORGANISATION..... Appellant की प्रमाणित फोटोप्रति की फोटोप्रति।

5. 2014 (141) F.L.R, Page-654 AIR INDIA EMPLOYEES UNION, MUMBAI.... Petitioners V/s. AIR INDIA LTD. And another.... Respondants.

22. विपक्षी की तरफ से निम्न विधिक दृष्टान्त प्रस्तुत किये गये हैं :-

(1) केस नम्बर सी.एल.सी. 16/2002 लगायत 18/2002, 20/2002, 21/2002 एवं 28/2002 लगायत 36/2002 सी.जी.आई.टी. जयपुर, अन्तर्गत धारा 33 सी (2) में पारित निर्णय आदेश दिनांक 28.05.2003 की प्रमाणित फोटोप्रति की फोटोप्रति।

(2) केस नम्बर सी.एल.सी. 14/2003 लगायत सी.एल.सी. 25/2003, सी.जी.आई.टी. जयपुर, अन्तर्गत धारा 33 सी (2) में पारित निर्णय आदेश दिनांक 31.03.2005 की प्रमाणित फोटोप्रति की फोटोप्रति।

23. याची के विद्वान अधिवक्ता की तरफ से यह बहस की गयी है कि भूतपूर्व सैनिकों की नियुक्ति सशस्त्ररक्षक/गार्ड कम प्यून के पद पर विपक्ष द्वारा की गयी थी और नियुक्ति के बाद उनका वेतन निर्धारण विपक्षी बैंक द्वारा किया गया था। तत्पश्चात् बैंक द्वारा पुनःवेतन निर्धारण किया गया जिसके आधार पर पूर्व में निर्धारित वेतन की तुलना में कम वेतन निर्धारित किया गया जो औद्योगिक विवाद अधिनियम 1947 की धारा 9 ए का उल्लंघन है। यह बहस भी की गयी है कि उपरोक्त पुनःवेतन निर्धारण से सम्बन्धित सर्कुलर के आधार पर पुनःनिर्धारित वेतन के विरुद्ध याचिका में माननीय दिल्ली उच्च न्यायालय ने पुनःवेतन निर्धारण को धारा 9 ए औद्योगिक विवाद अधिनियम 1947

की नोटिस दिये बिना विधि विरुद्ध अवधारित किया है। याची पक्ष की तरफ से बहस से सम्बन्धित विधि व्यवस्था न्यायाधिकरण के समक्ष प्रस्तुत की गयी है। इसके विरुद्ध विपक्षी बैंक के विद्वान प्रतिनिधि की तरफ से यह बहस की गयी है कि रिट याचिकाओं में माननीय उच्च न्यायालय द्वारा जो आदेश पारित किया गया है उसका विपक्षी बैंक पर कोई बाध्यकारी प्रभाव नहीं है क्योंकि माननीय उच्च न्यायालय का निर्णय **Judgement in personam** है। यह बहस भी की गयी है कि सर्कुलर 43/94 दिनांकित 12.12.1994 के अनुसार वेतन के पुनःनिर्धारण हेतु धारा 9 ए औद्योगिक विवाद अधिनियम 1947 की नोटिस दिया जाना आवश्यक नहीं है। यह बहस भी की गयी है कि प्रार्थी यूनियन द्वारा 1994 में जारी परिपत्र को अतिबिलम्ब से चुनौती दी गयी है, जिसका कोई तर्कसंगत कारण नहीं दिया गया है, अतः क्लेम खारिज होने योग्य है।

24. उभयपक्ष की तरफ से प्रस्तुत अभिवचनों और बहस के आधार पर विचारण हेतु मुख्य प्रश्न यह अवतरित होता है कि क्या बैंक ऑफ राजस्थान द्वारा सर्कुलर संख्या 43/94 दिनांकित 12.12.94 के आधार पर पुनःवेतन निर्धारण और पूर्व में निर्धारित वेतन को आधार मानकर किये गये अत्यधिक भुगतान की वसूली के पूर्व धारा 9 ए औद्योगिक विवाद अधिनियम 1947 के अन्तर्गत याची पक्ष को नोटिस न दिया जाना विधि विरुद्ध है?

25. जहां तक याचिका के समर्थन में मौखिक साक्ष्य का प्रश्न है अपनी शपथ-पत्र पर प्रस्तुत साक्ष्य पर याची साक्षी श्री अनिल माथुर, महासचिव, पंजाब नेशनल बैंक वर्कर्स आर्गेनाइजेशन, राजस्थान ने प्रतिपरीक्षा में कहा है कि 12.12.94 के पूर्व सशस्त्ररक्षक/गार्ड कम प्यून को उनकी अन्तिम वेतन प्रमाण पत्र (एल.पी.सी.) के आधार पर वेतन दिया जाता था। साक्षी ने यह भी कहा है कि वर्तमान प्रकरण में एल.पी.सी. के आधार पर जो वेतन निर्धारण होना चाहिये था उसी के सम्बन्ध में मांग की गयी है। साक्षी ने यह भी कहा है कि क्लेम के साथ देय धनराशि के विवरण से सम्बन्धित कोई दस्तावेज पेश नहीं किया है। आगे साक्षी ने कहा है कि याचिका संख्या 115/96 में भूतपूर्व सैनिकों, जिनसे वसूली की गयी थी उनके सम्बन्ध में याचिका प्रस्तुत की गयी थी और इसके आधार पर बैंक ने केवल 8 भूतपूर्व सैनिकों को लाभ दिया था इसलिये शेष के सम्बन्ध में वर्तमान याचिका प्रस्तुत की गयी है। यह भी कहा है कि न्यायालय ने 43/94 परिपत्र को अपास्त किया था लेकिन बैंक ने निर्णय की गलत व्याख्या की। साक्षी ने यह स्वीकार किया है कि याचिका संख्या 115/96 की प्रतिलिपि याची पक्ष की तरफ से पत्रावली पर नहीं प्रस्तुत की गयी है। साक्षी ने यह भी स्वीकार किया है कि याचिका के प्रस्तर 12 में माननीय पंजाब एवं हरियाणा उच्च न्यायालय के खण्डपीठ के निर्णय की प्रति उन्होंने नहीं प्रस्तुत की है। साक्षी ने यह भी स्वीकार किया है कि औद्योगिक विवाद अधिनियम की धारा 9 ए की नोटिस नहीं दिये जाने के सम्बन्ध में उन्होंने बैंक को लिखित शिकायत की थी परन्तु उसकी प्रतिलिपि पत्रावली पर नहीं प्रस्तुत की है एवं वर्तमान विवाद के सम्बन्ध में यूनियन ने बैंक को पत्र लिखा था। साक्षी ने यह भी कहा है कि परिपत्र संख्या 43/94 भारत सरकार के निर्देश से जारी न होकर बैंक द्वारा स्वयं जारी किया गया था। आगे साक्षी ने कहा है कि क्लेम में भूतपूर्व सैनिकों के सम्बन्ध में वेतन और भत्तों का कोई विवरण नहीं दिया गया है। यह भी कहा है कि किस कर्मचारी की कितनी राशि कटौती की जा रही है ध्यान नहीं है क्योंकि प्रत्येक की अलग-अलग राशि काटी जा रही

है तथा इस सम्बन्ध में विवरण पेश नहीं किया है। साक्षी ने इस सुझाव से इन्कार किया है कि उसके द्वारा साक्ष्य में प्रस्तुत की गयी शपथ-पत्र गलत तथ्यों के आधार पर तैयार की गई है। शपथ-पत्र में प्रस्तुत तथ्यों के सम्बन्ध में साक्षी ने कहा है कि उसने शपथ-पत्र में जो तथ्य लिखे हैं वह गलत नहीं है। साक्षी ने आगे प्रतिपरीक्षा में यह उल्लेख किया है कि सन् 2004 के बाद नोटिस देने के बाद ही वेतन का पुनर्निर्धारण किया गया और पुनर्निर्धारण में जो वसूली (Recovery) बन रही थी तथा दिशानिर्देश के अनुसार जो वेतन कम बनता था वह कम ही रहा। साक्षी ने यह भी कहा है कि रिट याचिका में जो पक्षकार थे उनको भी नोटिस देकर उनका पुनः वेतन निर्धारण किया गया एवं वसूली की गयी तथा वेतन एवं भत्ते कम कर दिये गये। यह भी स्वीकार किया गया है कि सन् 2004 के बाद भारत सरकार एवं भारतीय बैंक संघ से कोई निर्देश नहीं आये थे।

26. जहाँ तक विपक्ष द्वारा प्रस्तुत मौखिक साक्ष्य का प्रश्न है श्री ब्रजेन्द्र बत्रा, अधिकृत प्रतिनिधि, पंजाब नेशनल बैंक ने वादोत्तर के समर्थन में साक्ष्य में शपथ-पत्र प्रस्तुत किया है और प्रतिपरीक्षा में यह स्वीकार किया है कि दिनांक 12.12.94 के सर्कुलर के आधार पर वेतन पुनर्निर्धारण में कुछ सशस्त्ररक्षक/गार्ड कम प्यून के वेतन व भत्तों में कमी आयी है यह बात सही है लेकिन वह प्रतिपरीक्षा के समय यह नहीं बता सकते कि ऐसे कितने सशस्त्ररक्षक/गार्ड कम प्यून है जिनके वेतन में पुनर्निर्धारण से कमी नहीं आयी। साक्षी ने यह भी स्वीकार किया है कि 21.8.86 के परिपत्र के आधार पर वेतन निर्धारण के लिए निकाले गये आदेश में इस बात का उल्लेख नहीं किया गया था कि भविष्य में दिशानिर्देश आने पर निर्धारित वेतन में संशोधन कर दिया जायेगा। साक्षी ने यह तथ्य भी स्वीकार किया है कि दिनांक 12.12.94 के परिपत्र के अन्तर्गत सशस्त्ररक्षक/गार्ड कम प्यून का वेतन निर्धारण करने के पूर्व उन्हें सुनवाई का कोई मौका नहीं दिया गया था क्योंकि पुनर्निर्धारण सरकार के दिशानिर्देश के अनुपालन में था और दिशानिर्देश के अनुपालन में पुनर्निर्धारण होने की वजह से धारा 9 ए औद्योगिक विवाद अधिनियम के अन्तर्गत सशस्त्ररक्षक/गार्ड कम प्यून को नोटिस नहीं दी गयी। साक्षी ने यह भी स्वीकार किया है कि प्रेमसिंह वाली रिट में दिनांक 12.12.94 के परिपत्र को अवैध एवं अनुचित माना गया लेकिन उल्लेखनीय है कि साक्षी का यह कथन सही नहीं है क्योंकि 12.12.94 के परिपत्र को अवैध एवं अनुचित नहीं माना गया बल्कि प्रेमसिंह के मामले में केवल 8.5.95 के वेतन निर्धारण के आदेश को विधि विरुद्ध घोषित करने की प्रार्थना की गयी थी जो 12.12.94 के दिशानिर्देश पर आधारित थी और निर्णय में 8.5.95 के आदेश को माननीय उच्च न्यायालय ने निरस्त किया है। साक्षी ने इस सुझाव से इन्कार किया है कि दिनांक 6.11.2000 के निर्णय के बाद कुछ सशस्त्ररक्षक/गार्ड कम प्यून के वेतन से वसूली नहीं की गयी और उनका वेतन भी कम नहीं किया गया और कुछ के वेतन से कटौती की गयी और उनका वेतन भी कम कर दिया गया।

27. जहाँ तक धारा 9 ए औद्योगिक विवाद अधिनियम 1947 के अन्तर्गत विपक्ष को अनिवार्य रूप से नोटिस दिये जाने का प्रश्न है सुलभ सन्दर्भ हेतु धारा 9 ए उद्धृत किया जा रहा है। धारा 9 ए नोटिस के सम्बन्ध में निम्न व्यवस्था प्रदान करती है :-

“धारा 9-क. तब्दीली की सूचना – कोई भी नियोजक, जो किसी कर्मकार को लागू सेवा की शर्तों में किसी ऐसे विषय की बाबत, जो चतुर्थ अनुसूची में विनिर्दिष्ट है, कोई तब्दीली करने की प्रस्थापना करता है – (क) ऐसे कर्मकार को, जिस पर ऐसी तब्दीली का प्रभाव पड़ना सम्भाव्य हो, प्रस्थापित तब्दीली की प्रकृति की विहित रीति से सूचना दिए बिना, अथवा (ख) ऐसी सूचना देने के इक्कीस दिन के भीतर, ऐसी तब्दीली नहीं करेगा: परन्तु ऐसी कोई तब्दीली करने के लिए उस दशा में किसी भी सूचना की अपेक्षा नहीं होगी जिसमें कि— (क). तब्दीली किसी समझौते या अधिनिर्णय के अनुसरण में की गई है, अथवा (ख)....

28. प्रेमसिंह द्वारा प्रस्तुत याचिका के सम्बन्ध में यह उल्लेख करना प्रासंगिक है कि याचिकाकर्ता द्वारा वर्तमान याचिका में प्रस्तुत कथन के अनुसार श्री प्रेम सिंह ने याचिका संख्या 1722/95 माननीय राजस्थान उच्च न्यायालय के समक्ष सर्कुलर 43/94 दिनांकित 12.12.94 के विरुद्ध प्रस्तुत की थी और याचिका संख्या 115/96 यूनियन ने विपक्षी के विरुद्ध उसी अनुतोष के लिए प्रस्तुत की थी जिस अनुतोष के लिए प्रेम सिंह ने याचिका प्रस्तुत की थी। श्री प्रेम सिंह ने याचना की थी कि आदेश दिनांक 8.5.95 जिसके माध्यम से उनका वेतन पुनःनिर्धारित किया गया था और दिनांक 14.3.92 से 8.5.95 तक अधिक अदा की गयी धनराशि को वसूलने का आदेश किया गया था, उसे अवैध घोषित किया जाए तथा निरस्त किया जाए। दिनांक 24.8.2000 को माननीय राजस्थान उच्च न्यायालय की एकलपीठ द्वारा श्री प्रेमसिंह की याचिका पर पारित अन्तिम आदेश निम्नवत् है :-

“The fact is that without hearing the petitioner recovery order was passed, therefore, Mr. Mathur was not in a position to defend the order in question, which is already stayed by this court while issuing notice to the other side on the main petition.

In view of the above, the impugned order of recovery is quashed and set aside as the same is passed in clear violation of principle of natural justice with a direction to the respondent Bank to pass fresh order only after extending an opportunity of hearing to the petitioner.

If the order is adverse to the petitioner, then the petitioner will be at liberty to challenge the same before appropriate forum by way of appropriate proceedings.

Accordingly, this petition is allowed.

Signature illegible

(B. J. SHETHNA), J.

29. एस.बी. सिविल याचिका संख्या 115/96 Association of Punjab National Bank Employees Rajasthan, Jaipur through its General Secretary V/s. Punjab National Bank में माननीय राजस्थान उच्च न्यायालय, जोधपुर ने दिनांक 6.11.2000 को याचिका का निस्तारण करते हुए निम्न आदेश पारित किया :-

“.....Learned Counsel Sh. Vijay Mehta for the petitioners submitted that identical writ petition number 1722/95 has been decided on 24-8-2000.

In terms of the aforesaid Judgement, this petition is disposed of. Stay petition is also disposed of.

Signature illegible

(B. J. SHETHNA), J.

30. श्री प्रेमसिंह द्वारा प्रस्तुत याचिका संख्या 1722/95 में माननीय उच्च न्यायालय द्वारा पारित आदेश दिनांक 24.8.2000 और Association of Punjab National Bank Employees Rajasthan, Jaipur through its General Secretary V/s. Punjab National Bank द्वारा प्रस्तुत याचिका संख्या 115/96 में माननीय राजस्थान उच्च न्यायालय, जोधपुर द्वारा पारित आदेश दिनांक 6.11.2000 के अवलोकन से यह जाहिर है कि 115/96 में 1722/95 में पारित आदेश का अनुसरण किया गया है जिसके अनुसार सकुर्लर 43/94 दिनांकित 12.12.94 के आधार पर वेतन पुनर्निर्धारण के आदेश को निरस्त किया गया है।

31. विपक्ष की तरफ से उद्धृत तथा इस न्यायाधिकरण द्वारा निर्णित केस नम्बर सी.एल.सी. 16/2002 लगायत 18/2002, 20/2002, 21/2002 एवं 28/2002 लगायत 36/2002 सी.जी.आई.टी. जयपुर, अन्तर्गत धारा 33 सी (2) में पारित निर्णय आदेश दिनांक 28.05.2003 और केस नम्बर सी.एल.सी. 14/2003 लगायत सी.एल.सी. 25/2003, सी.जी.आई.टी. जयपुर, अन्तर्गत धारा 33 सी (2) में पारित निर्णय आदेश दिनांक 31.03.2005 द्वारा सभी आवेदनों को इस न्यायाधिकरण द्वारा निर्णित करते हुए इस आधार पर खारिज किया गया है कि ये सभी आवेदन धारा 33 सी (2) औद्योगिक विवाद अधिनियम के अन्तर्गत पोषणीय नहीं हैं। इन निर्णित मामलों को विपक्ष द्वारा न्यायाधिकरण के समक्ष इसलिये उद्धृत किया गया है कि न्यायाधिकरण ने इन मामलों को निरस्त किया है इसलिये केन्द्रीय सरकार द्वारा निर्णयार्थ रेफरेन्स के आधार पर पंचाट हेतु प्रेषित याची पक्ष की याचित अनुतोष के लिए वर्तमान आवेदन भी निरस्त होनी चाहिये लेकिन विपक्ष की उक्त बहस पोषणीय नहीं है क्योंकि न्यायाधिकरण ने आवेदनों को इस आधार पर निरस्त किया है कि धारा 33 सी (2) के अन्तर्गत याचीगण द्वारा याचित अनुतोष प्रदान नहीं किये जा सकते थे और याचित अनुतोष के लिए याची पक्ष को धारा 10 ए के अन्तर्गत आवेदन प्रस्तुत करनी चाहिए। अतः मैं इस निष्कर्ष पर हूँ कि धारा 33 सी (2) के अन्तर्गत पारित निर्णय आदेशों से विपक्ष की बहस को कोई बल नहीं मिलता है। उल्लेखनीय है कि वर्तमान याचिका में उन्हीं अनुतोषों की मांग की गयी है जो धारा 33 सी (2) के अन्तर्गत निरस्त की गयी है।

32. याची पक्ष की तरफ से प्रस्तुत दृष्टान्त 1975 (31) F.L.R, Page-178, MGMT. OF INDIAN OIL CORPORATION LTD.—Appellant V/s. IT'S WORKMEN - में औद्योगिक विवाद अधिनियम 1947 की धारा 9 ए के अन्तर्गत कर्मकार को नोटिस दिये जाने के उद्देश्य एवं महत्व के सम्बन्ध में माननीय सर्वोच्च न्यायालय ने पेज 184 पर निर्णय में यह उल्लेख किया है, “The real object and purpose of enacting section 9-A seems to be to afford an opportunity to the workmen to consider the effect of the proposed change and, if necessary, to represent their point of view on the proposal. Such consultation further serves to stimulate a feeling of common joint interest of the management and workmen in the industrial progress and increased

productivity. This approach on the part of the industrial employer would reflect his harmonious and sympathetic co-operation in improving the status and dignity of the Industrial employee in accordance with the egalitarian and progressive trend of our industrial jurisprudence, which strives to treat the capital and labour as co-shares and to break away from the tradition of labour's subservience to capital.”

The observations made by this Court lay down the real test as to the circumstances in which Section 9-A would apply. In the instant case, however, we are satisfied (1) that the grant of the compensatory allowance was an implied condition of service; and (2) and that by withdrawing this allowance the employer sought to effect a change which adversely and materially affected the service conditions of the workmen. In these circumstances, therefore, Section 9-A of the Act was clearly applicable and the non-compliance with the provisions of this section would undoubtedly raise a serious dispute between the parties so as to give jurisdiction to the Tribunal to give the Award. If the appellant wanted to withdraw the Assam Compensatory Allowance it should have given notice to the workmen, negotiate the matter with them and arrived at some settlement instead of withdrawing the Compensatory allowance overnight.”

33. 1995 (1) L.L.J., (Supreme Court), Page- 875, Calcutta Electric Supply Corp. Ltd.... Appellant V/s. Calcutta Electric Supply Worker's Union & Ors.Respondents के मामले में न्यायाधिकरण के समक्ष दो प्रश्न विचारणीय थे। प्रथमतः यह कि क्या नियोक्ता द्वारा कर्मकार को मिलने वाले वेतन एवं परिस्थितियों में लाया गया परिवर्तन धारा 9 ए औद्योगिक विवाद अधिनियम के उल्लंघन में था तथा द्वितीयतः यह कि क्या नियोक्ता Employees State Insurance Act 1947 के लागू होने के बाद कर्मकार को जो चिकित्सीय लाभ उपलब्ध थे उन्हें वापस लेने का हकदार था ? न्यायाधिकरण ने दोनों प्रश्नों के उत्तर कर्मकार के पक्ष में दिये जिसके विरुद्ध अपील में माननीय उच्च न्यायालय के समक्ष यह प्रश्न विचारणीय था क्या चिकित्सीय लाभ जो कार्पोरेशन के कर्मचारियों को सेवा-शर्तों के रूप में उपलब्ध था उसे नियोक्ता द्वारा इस आधार पर वापस लिया जा सकता था कि कर्मचारीगण Employees State Insurance Act के प्राविधान से शासित हैं? माननीय उच्च न्यायालय ने अपील खारिज कर न्यायाधिकरण के निर्णय की पुष्टि की एवं निर्णय के प्रस्तर 2 में अवधारित किया, “.....the tribunal held against the appellant employer and hence the present appeals. To withdraw the said benefits, the employer served as many as four notices dated March 30, 1964, June 19, 1968, November 13, 1975 and August 10, 1976. It is not disputed that none of the notices in question was in Form 'E' prescribed under Rule 34 of the Industrial Disputes (Central) Rules, 1957. Nor is it disputed that none of them was served either on the respondent Union of workers as required by Rule 34 and Form 'E'. In fact, it was the case of the employer that there was no change in the service conditions prejudicial to the workers and hence no notice

under Section 9 –A of the Act was necessary. The tribunal held that the withdrawal of the medical benefits was prejudicial to the workers and therefore, the notice was necessary and since no such notice was given, the withdrawal of the benefits was illegal. We are in agreement with the said finding.....”.

34. 2003 (97) F.L.R, Page- 1110, DIRECTOR, STATE FARMS CORPORATION OF INDIA LTD. – Appellant V/s. JUDGE, INDUSTRIAL TRIBUNAL AND LABOUR COURT, BIKANER And others — Respondants में नियोक्ता द्वारा कर्मकारों को दिनांक 28.10.66 के आदेश से 10 प्रतिशत प्रोजेक्ट अलाउन्स के रूप में धनराशि अनुमत्य थी जो नवम्बर 30, 1974 के आदेश से घटाकर 8 प्रतिशत कर दी गयी। औद्योगिक न्यायाधिकरण ने 31.3.84 के आदेश से यह निर्णित किया कि प्रोजेक्ट एलाउन्स में की गयी कमी से कर्मकारों की सेवा शर्तों में परिवर्तन हुआ है जिसके सम्बन्ध में 21 दिन की नोटिस कर्मकारों को नहीं दी गयी जिसके परिणामस्वरूप औद्योगिक विवाद अधिनियम, 1947 की धारा 9 ए का उल्लंघन हुआ। औद्योगिक न्यायाधिकरण के निर्णय के विरुद्ध अपीलार्थी/नियोक्ता की याचिका माननीय उच्च न्यायालय की एकलपीठ द्वारा 14.8.95 को निरस्त की गयी। एकलपीठ के निर्णय के विरुद्ध अपीलार्थी द्वारा याचिका माननीय खण्डपीठ द्वारा 24.1.2003 को निरस्त की गयी। माननीय खण्डपीठ ने निर्णय के प्रस्तर 13 में यह अवधारित किया, “.....The reduction in project allowance undoubtedly results in reduction of wages as defined in section 2 (rr) of the Industrial Disputes Act, 1947 and falls within conditions of service for change of which notice is to be given under items 1 and 3 of Schedule IV appended to the Act which attracted operation of section 9-A of the said; which has been held to be mandatory requirement before any such alteration can be affected.

35. माननीय उच्च न्यायालय की खण्डपीठ द्वारा दी गयी उक्त विधि व्यवस्था से यह भलीभाँति स्पष्ट कि धारा 9 ए में दी गयी नोटिस की व्यवस्था आज्ञापक है और तदनुसार उसका अनुपालन अनिवार्य है। पूर्व में सन् 1986 के सकुर्लर के आधार पर किये गये प्रारम्भिक वेतन निर्धारण एवं 1994 के सकुर्लर के आधार पर किये गये बाद के वेतन निर्धारण की सारिणी के अवलोकन से, जिसे विपक्ष द्वारा दृष्टान्त के रूप में प्रस्तुत किया गया है, स्पष्ट होता है कि कटौती मूल वेतन में की गयी है जो सेवा की शर्तों का आवश्यक एवं अभिन्न अंग है। ऐसी सेवाशर्तों में परिवर्तन किये जाने के पूर्व विधिक दृष्टान्त में दी गयी व्यवस्था के अनुसार कर्मकार को नोटिस दिया जाना आज्ञापक है।

36. 2014 (141) F.L.R, Page- 654, AIR INDIA EMPLOYEES UNION, MUMBAI.... Petitioners V/s. AIR INDIA LTD. And another.... Respondants में औद्योगिक विवाद अधिनियम, 1947 की धारा 9 ए के अन्तर्गत नोटिस दिये जाने के महत्व और अनिवार्यता के सम्बन्ध में माननीय मुम्बई उच्च न्यायालय की खण्डपीठ ने निर्णय के प्रस्तर 9 में यह अवधारित किया है, “9. We have considered the rival submission. The crux of the dispute between the parties is whether in the facts of this case Section 9-A of the I.D. Act is at all applicable. It is very clear that section

9-A of the I.D. Act is applicable whenever an employer seeks to change the conditions of service of any workman in respect of matters referred to in the fourth schedule to the I.D. Act. This section prohibits any change in conditions of service unless notice of at least 21 days of proposed changes in conditions of service is given in the prescribed manner to the workmen. The exceptions provided to the above requirement in section 9-A of the I.D. Act is in present facts applicable only when the change is effected by virtue of settlement/award or when the appropriate Government has issued a notification notifying the rules/regulations under clause (b) of the provisions to section 9-A of the I.D. Act.”

37. Judgement & Order Dated – 26.02.2013 IN THE HIGH COURT OF DELHI AT NEW DELHI IN W.P.(C)8447/2008 & C.M. Nos. 16260/2008, 6530/2009, Punjab National Bank.... Petitioner v/s. General, Secretary, PNB WORKERS ORGANISATION..... Appellant में सीजीआईटी कम लेबर कोर्ट द्वितीय, के समक्ष आई.डी. नम्बर 45/1987 में विचारण हेतु केन्द्रीय सरकार द्वारा निम्न प्रश्न प्रेषित किया गया :- “Whether the action of the management of Punjab National Bank in effecting their circular letter no. 43/94 dated 12-12-1994 (new fitment formula) for fixing basic pay of ex-servicemen employees and recovering of excess amount paid w.e.f. 13.03.1992 is legal and justified? If not, to what relief are the workmen entitled and since what date.”

38. सीजीआईटी कम लेबर कोर्ट द्वितीय के विद्वान पीठासीन अधिकारी ने उक्त रेफरेन्स के विरुद्ध दिनांक 26.6.2008 को निम्न पंचाट पारित किया :- “The action of the management of Punjab National Bank in effecting their circular letter no. 43/94 dated 12-12-1994 (new fitment formula) for re-fixing basic pay of ex-servicemen and recovering of excess amount paid w.e.f. 13.03.1992 is neither legal nor justified. The bank may recover excess amount of those ex-servicemen who joined on or before 13.03.1992. The pay of ex-servicemen who joined on or after 13.03.1992 may be re-fixed in view of the circular of the Government dated 21.07.1986. The management has illegally re-fixed the pay of those ex-servicemen who joined prior to 13.03.1992. The management should restore the pay scale of those ex-servicemen as their getting from their initial engagement and deduction any made in view of the circular dated 12.12.1994 is illegal. The management should restore the pay scale and re-pay the deducted amount from the pay of the ex-servicemen who joined prior to 13.03.1992 within two months from the date of the publication of the award.”

39. न्यायाधिकरण के उक्त पंचाट दिनांकित 26.6.2008 के विरुद्ध माननीय उच्च न्यायालय के समक्ष भारतीय संविधान के अनुच्छेद 226 के अन्तर्गत प्रस्तुत याचिका में बहस में यह इंगित किया गया कि माननीय पंजाब एवं हरियाणा उच्च न्यायालय की खण्डपीठ ने W.P.(c) No. 109/1998, Shankar Lal & Ors. V. Union of India & Ors. के साथ कर्ष

याचिकाएं दिनांक 19.08.1999 को निर्णित की है। माननीय खण्डपीठ ने याची पंजाब नेशनल बैंक द्वारा वेतन कम करने और वेतन से वसूली करने के कृत्य को सकारण निरस्त किया है जिसमें पारित आदेश निम्नवत् है :- “In the circumstances of the case. We do not consider it necessary to get into the matter in detail. On a perusal of the pleadings of the parties, it is clear that the emoluments of the petitioners have been revised and reduced. It is also admitted position that no notice was given to the petitioners before the impugned action was taken. It has been contended by Mr. H.C. Aroro, learned counsel for the petitioners, that if an opportunity had been granted, the petitioners could have been shown that their pay could not be reduced in accordance with the provisions in the bipartite settlement. He also invokes the provisions of section 9-A of the Industrial Disputes Act, 1947 to contend that the conditions of service governing the employee could not have been altered to their disadvantage.”

Reduction of wages is certainly a civil consequence which flows from the impugned action. It is well settled that even an administration order which has civil consequences, must be passed in conformity with the principles of natural justice. In the present case it is not disputed that no opportunity was given to the petitioners. Thus the impugned action is violative of the principles of natural justice.

We dispose of the writ petitions with the direction that the impugned orders of reduction in pay are quashed. The consequential reliefs shall follow it will however be open to the respondents to proceed afresh in accordance with the principles of natural justice.”

40. माननीय दिल्ली उच्च न्यायालय के समक्ष उभयपक्ष ने सहमति प्रदान की कि माननीय पंजाब एवं हरियाणा उच्च न्यायालय की खण्डपीठ के उक्त निर्णय को वर्तमान मामले में न्यायाधिकरण के निर्णय के विरुद्ध स्थापित किया जाय। तदनुसार माननीय दिल्ली उच्च न्यायालय ने पक्षकारों की सहमति के आधार पर माननीय पंजाब एवं हरियाणा उच्च न्यायालय द्वारा दिये गये निर्देश के अनुसार रिट याचिका निर्णित की और कर्मकारों के वेतन को कम करने के आदेश को निरस्त किया। केन्द्र सरकार द्वारा इस न्यायाधिकरण के समक्ष विचारणार्थ प्रेषित रेफरेन्स के अवलोकन से यह विदित होगा कि सीजीआईटी कम लेबर कोर्ट द्वितीय दिल्ली के समक्ष विचारणार्थ प्रेषित मामले और वर्तमान मामले में एकरूपता है और माननीय दिल्ली उच्च न्यायालय ने माननीय पंजाब एवं हरियाणा उच्च न्यायालय की खण्डपीठ द्वारा दिये गये निर्णय का अनुसरण किया है। इस न्यायाधिकरण के समक्ष विपक्षी बैंक द्वारा ऐसा कोई दृष्टान्त नहीं प्रस्तुत किया गया है जिससे यह जाहिर हो कि माननीय पंजाब एवं हरियाणा उच्च न्यायालय अथवा माननीय दिल्ली उच्च न्यायालय के निर्णय के विरुद्ध कोई मामला उपरी न्यायालय में विचाराधीन है अथवा दोनों ही उच्च न्यायालयों के आदेश के विरुद्ध कोई स्थगन आदेश प्रभावी हैं। उक्त तथ्य एवं परिस्थिति में मैं इस मत का हूँ कि माननीय दिल्ली उच्च न्यायालय द्वारा अथवा माननीय पंजाब एवं हरियाणा उच्च न्यायालय की खण्डपीठ द्वारा पारित निर्णय वर्तमान मामले में भी अनुकरणीय है।

41. पक्षकारों के अभिवचनों तथा उसके समर्थन में प्रस्तुत साक्ष्य तथा पक्षकारों द्वारा अपने समर्थन में प्रस्तुत बहस एवं विधिक दृष्टान्तों के सम्यक् अवलोकन एवं उक्त विश्लेषण के आधार पर मैं इस निष्कर्ष पर हूँ कि विपक्ष द्वारा कर्मकारों को औद्योगिक विवाद अधिनियम, 1947 की धारा 9 ए के अन्तर्गत नोटिस दिये बिना सर्कुलर संख्या 43/94 दिनांकित 12.12.94 के आधार पर पुनःवेतन निर्धारण और पूर्व में किये गये वेतन निर्धारण को आधार बनाकर दिनांक 13.3.92 से अत्यधिक भुगतान की वसूली विधि विरुद्ध है क्योंकि विपक्ष द्वारा सर्कुलर संख्या 43/94 दिनांकित 12.12.94 के आधार पर पुनःवेतन निर्धारण और वसूली की कार्यवाही कर्मकारों की सेवा शर्तों में परिवर्तन है जो धारा 9 ए की नोटिस दिये बिना नहीं की जा सकती है। विपक्ष द्वारा की गयी कार्यवाही न्यायसंगत नहीं है तथा विधि विरुद्ध है।

42. विपक्ष के विद्वान प्रतिनिधि की तरफ से यह बहस की गयी है कि कर्मकारों की सूची याची पक्ष द्वारा नहीं प्रस्तुत की गयी है जिससे यह जाहिर हो कि इस मामले में निर्णय से कौन-कौन कर्मकार प्रभावित होंगे अथवा निर्णय का लाभ किनको-किनको प्राप्त होगा। इस सन्दर्भ में उल्लेखनीय है कि इस प्रश्न का उत्तर भारत सरकार द्वारा पंचाट हेतु प्रेषित रेफरेन्स में ही निहित है और स्पष्ट है कि इस निर्णय का प्रभाव पंजाब नेशनल बैंक के उन समस्त सशस्त्र/सुरक्षा गार्डों पर पड़ेगा जो राजस्थान राज्य से सम्बन्धित है एवं उनका वेतन पुनर्निर्धारण सर्कुलर संख्या 43/94 दिनांकित 12.12.94 के आधार पर किया गया है। तदनुसार मैं इस निष्कर्ष पर हूँ कि जोनल मैनेजर, पंजाब नेशनल बैंक, जयपुर के माध्यम से बैंक प्रबन्धन द्वारा सर्कुलर संख्या 43/94 दिनांकित 12.12.94 के आधार पर राजस्थान राज्य में सेवारत सशस्त्र/सुरक्षा गार्डों की वेतन का पुनर्निर्धारण तथा वेतन से वसूली की कार्यवाही न्यायानुमत नहीं है। परिपत्र संख्या 43/94 दिनांकित 12.12.94 के आधार पर विपक्ष द्वारा पुनःवेतन निर्धारण एवं वसूली की कार्यवाही से सम्बन्धित विपक्ष द्वारा पारित आदेश निरस्त किया जाता है। विपक्ष को आदिष्ट किया जाता है कि उक्त पुनःवेतन निर्धारण के आधार पर वसूल की गयी समस्त धनराशि समस्त सम्बन्धित सशस्त्र/सुरक्षा गार्डों को वापस की जाय और परिवर्तन के पूर्व उन्हें दी जा रही वेतन पुनर्स्थापित कर आजतक अनुमन्य वेतन वृद्धि के साथ प्राप्त होने वाली धनराशि का भुगतान भी किया जाय। पंचाट का अनुपालन पंचाट की विज्ञप्ति से 2 माह के अन्दर किया जाय। याचिका में याचित शेष अनुतोष अस्वीकार किये जाते हैं। विपक्ष धारा 9 ए औद्योगिक विवाद अधिनियम, 1947 की नोटिस देने के बाद परिपत्र संख्या 43/94 दिनांकित 12.12.94 के आधार पर वेतन पुनर्निर्धारण एवं वसूली की कार्यवाही विधिक अनुमन्यता के अनुसार करने के लिए स्वतन्त्र होगा। प्रार्थी की स्टेटमेंट आफ क्लेम में याचित अनुतोष तदनुसार स्वीकार किये जाते हैं। न्यायनिर्णय हेतु प्रेषित निर्देश का उत्तर उक्त प्रकार दिया जाता है। पंचाट तदनुसार पारित किया जाता है।

43. पंचाट की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम, 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जाय।

भरत पाण्डेय, पीठासीन अधिकारी

नई दिल्ली, 4 जनवरी, 2016

का.आ. 63.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोर्पोरेशन बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 54/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.01.2016 को प्राप्त हुआ था।

[सं. एल-39025/01/2010-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 4th January, 2016

S.O. 63.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 54/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure in the Industrial Dispute between the management of Corporation Bank and their workman, received by the Central Government on 04-01-2016.

[No. L-39025/01/2010-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
NO.1, KARKARDOOMA COURT COMPLEX, DELHI**

ID No. 54/2012

Shri Shri Mahir Hussain,
F-245, JJ Colony,
Madipur,
Delhi 110 063

...Workman

Versus

Corporation Bank,
Mangala Devi Temple Road,
Pandeshwar, Mangalore through
General Manager, Zonal Office,
Hindustan Times House, 10th Floor,
KG Marg, Connaught Place,
New Delhi 110 001

...Management

AWARD

This petition has been filed by the workman herein under Section 2A(2) of the Industrial Disputes Act, 1947 (in short the Act) with the averment that the workman has served Corporation as a Peon for about 30 years as a permanent employee in the cadre of subordinate staff. He was posted at Gujranwala Town branch of the bank at Delhi and his services were terminated on 27.07.2010 by

the management. Thereafter, the workman filed an appeal dated 25.08.2010 before the Appellate Authority against the unjustified and illegal order of discharge on 27.07.2010 and the same was never considered by the Appellate Authority of the Bank. This deprived the workman of his lawful right of appeal. Rather, the Appellate Authority concurred with the finding of the Disciplinary Authority.

2. There are allegations that there was deep prejudice against the workman herein, which is visible from the findings recorded by the Enquiry Officer as well as the Competent Authority. Workman herein has also filed representation dated 05.01.2011 for his reinstatement in service. The said representation was construed as an appeal whereas the Chairman is not the Appellate Authority of the workman herein. In order to cover up non-consideration of the appeal dated 25.08.2010 and representation dated 05.01.2011 has been shown to be an appeal and the same being rejected by the Appellate Authority. Allegations levelled against the workman are all relating to opening of an account, issue of cheque book, entering of transactions in books of the bank and allowing overdraft, passing of instruments for payment/adjustments etc. Finally, the workman has alleged that the enquiry conducted by the Enquiry is not at all fair and the Enquiry Officer has acted on the wishes of the management as well as the Presenting Officer. The Enquiry Officer did not give any credence to the material and other evidence on record, but chose to rely upon hearsay evidence.

3. Reply was filed on behalf of the management wherein averments made in the statement of claim have been denied by the management. Management has taken preliminary objections, inter alia of maintainability, workman not approaching the Tribunal with clean hands etc. However, it is admitted that the petitioner has been working as Class IV peon with the Bank since 2005. He was placed under suspension on 10.08.2009 in terms of order of the competent authority on serious charges. Initially charge sheet dated 01.07.2009 was issued against the workman herein with the allegation that he was involved in opening and operating of SF account No.7471 in fictitious name of Jay Chand Malik and fraudulent collection of DD for Rs. 1,41,000.00, fraudulent withdrawal of Rs. 5000.00 dishonestly, causing financial loss to the bank to the tune of Rs. 5000.00.

4. This charge sheet was withdrawn on 10.08.2009 and a fresh charge sheet dated 21.10.2009 was issued against the workman herein, almost with similar allegations. Management has relied upon report of the Enquiry Officer as well as findings recorded by him and alleged that punishment of discharge awarded to the workman herein is in consonance with law. Evidence on record clearly establishes the charges levelled against the workman herein. Omission/ commission committed by the workman are detrimental to the interest of the bank.

5. Against this factual background, my learned predecessor, vide a order dated 17.09.2012 framed the following issues:

- (i) Whether enquiry conducted by the bank against the claimant was not fair and proper?
- (ii) Whether punishment awarded by the bank to the claimant was proportionate to his misconduct?
- (iii) Whether the claimant is entitled to relief of reinstatement?

6. Issue No.1 was treated as preliminary issue and both the parties were given opportunities to adduce evidence on this issue.

7. Claimant, in support of the stand taken in the pleadings, examined himself as WW1 and management in order to support findings recorded by the Enquiry Officer as well as order of discharge passed against the workman herein examined Shri S.K. Abhi, Enquiry Officer as MW1. Shri Abhi has also proved documents pertaining to the enquiry conducted by him and primarily supported the conclusion recorded in the above enquiry.

8. It is not out of place to mention here that vide order dated 31.03.2014, my learned predecessor held that the Appellate Authority has not decided the appeal of the workman herein in accordance with law. Resultantly, enquiry was found to be tainted and this issue was answered in favour of the claimant and against the bank. It is also not out of place to mention here that order dated 31.03.2014 passed by learned predecessor was also challenged before the Hon'ble High Court of Delhi through writ petition No.426 of 2014 and the Hon'ble High Court has also dismissed the said writ petition and upheld the order of this Tribunal vide its order dated 31.10.2014. After dismissal of the writ petition vide order dated 31.10.2014 by the Hon'ble High Court, the case was adjourned for further steps in the matter. However, it is clear from perusal of the record that in spite of several opportunities granted to the management to adduce evidence on merits, no steps were ever taken by the management to as to adduce fresh evidence in order to prove the allegations contained in the second charge sheet.

9. Before I proceed to consider the contention raised on behalf of the workman herein, it is necessary to mention the charges against the workman herein, which are contained in charge sheet dated 21.10.2009, Ex.WW1/3:

- (i) "Whereas in terms of letter No. PAD:DISC:42:09:1052:2009 dated 10.08.2009, you were placed under suspension. And whereas as per the above letter dated 10.08.2009, you were further informed that the earlier charge sheet bearing No. PAD:DISC:42:09:775:2009 dated 01.07.2009 issued to you stood withdrawn and that a fresh charge sheet would be issued for reasons stated

therein. Accordingly, the revised charge sheet is hereby issued for the allegation reported against you as under:

- (ii) That on 22.01.2009, one Shri Kapil, whose SB Account No.7112 was introduced by you, approached you, alongwith one person named Shri Jay Chand Malik and requested you to open one SB account in the name of the latter. That you provided the Account Opening form to them and then Shri Kapil, after putting his signature as introducer returned the said Account Opening Form to you and requested to fill up the remaining column. That the party also handed over to you an amount of Rs. 200.00 as initial deposit for opening the account alongwith supporting documents like one photograph, photocopies of driving licence, and PAN card in a single sheet of paper and left the branch. That you filled up the remaining details in the Account Opening Form, affixed the photograph and handed over the set of documents to Shri Suraj Mani officiating clerk for opening the new SB account. That accordingly on 22.01.2009, the SB account bearing No.7471 in the name of Shri Jay Chand Malik with residential address 'A-340, Madipur, New Delhi 110026' and office address 'C-4/194, Shakurpuri, New Delhi 110035' was opened at the branch. That the said account was opened with zero balance, without obtaining initial cash deposit of Rs. 500.00 as stipulated for new account. That you had informed Shri Suraj Mani and other connected staff members that as the case was closed for the day, you would deposit cash on the next day. That accordingly, on 23.01.2009, you deposited a sum of Rs. 200.00 towards initial cash deposit in respect of the aforesaid SB account. That you affixed the date seal on the Account Opening Form of SB account No.7471 without date, which is also used by you while preparing the slip bundle dated 22.01.2009. that the above circumstances indicate that the SB Account No.7471 was opened at your instance.
- (iii) That on 24.01.2009, a Demand Draft (DD) bearing No. 6904370 dated 17.01.2009 for Rs. 1,41,000.00 issued in favour of 'Jay Chand Mallick' drawn on State Bank of Bikaner and Jaipur, Kolkata, Brabourne Road branch was sent for collection under OCCF No.17/2009 for credit of SB account No.7471. That on 05.02.2009, a cheque book containing 10 leaves bearing cheque leaves No. 420011 to 420020 was issued in the SB Account No.7471. That though an entry was made to this effect in the cheque book issued Register of the branch by you, the cheque book

in question was delivered without obtaining signature of the account holder towards acknowledgement.

- (iv) That on 06.02.2009, an amount of Rs.5000.00 came to be withdrawn from the aforesaid SB account through cheque leaf No.420011, leaving a balance of Rs.1.36 lakh. That on 09.02.2009, Kolkata service Branch informed Delhi Gujranwala Town branch that the purchaser of the aforesaid DD had lodged a complaint with State Bank of Bikaner and Jaipur, Ghantol branch informing loss of the said DD and requested to exercise caution. That the purchaser of the DD also filed a police complaint in this regard. That on the basis of the said information, the aforesaid SB account was freezed by the branch. That on 10.02.2009 the branch Manager discussed the matter with the officials of the branch and also perused the account Opening Form pertaining to SB Account No.7471, which was in tact along with the photograph of the account holder. That on the same day, evening the Branch Manager informed all the staff members of the branch about the DD incident and at that time, he found the Account Opening Form tampered with someone replacing the photograph of the account holder with certain other photograph and also by removing photocopy of the PAC card and driving licence held with the Account Opening Form.
- (v) That on 14.02.2009, at about 9.00 p.m., you telephonically requested Shri Jai Pal, Officer of the branch to receive on closed cover containing certain documents from one Madan, a tea vendor, whose shop is located close to Delhi Gujranwala Town branch premises. That to collect the cover, when Shri Jai Pal, Officer approached Shri Madan on 15.02.2009, he refused to hand over the same to him. That, however, after getting confirmation from you over telephone, Shri Madan delivered the cover to Shri Jai Pal. That the said cover bears a single sheet of paper containing photocopies of both driving licence and PAN card in the name of Shri Jay Chand Malik. That verification of the said paper disclosed that the photograph, date of birth, PAN number and address as appearing on the said two documents are different from the details on record in the Account Opening Form of SB Account No.7471. that these circumstances go to show your involvement in opening SB account No.7471.
- (vi) That on verification of records, it came to light that the SB account No.7471 was opened with fictitious address and the account was opened fraudulently. That the proof of address of

Shri Kapil, the introducer and furnished to the bank was also fictitious. That the account opening form bear an unidentifiable initial of someone alongwith the seal of the Branch for having permitted the opening of the said account. That the purchaser of the aforesaid DD demanded refund of the amount as the amount was wrongly credited to some other account than that of the payee. That in the circumstances, Bank was compelled to settle the claim of the purchaser of the DD by making payment of Rs.1,41,000.00 by incurring a financial loss of Rs.5000.00 in the matter.

- (vii) that on 09.02.2009, another cheque pertaining to the said SB account No.7471 i.e. cheque no.420012 dated 06.02.2009 for Rs.1,35,500 favouring one Shri Suresh Prasad, was presented through clearing by Central Bank of India, Madipur, New Delhi branch. That however the said cheque was returned unpaid, as the operations in the said SB account No.7471 was freezed. That it was later revealed that the payee of the said cheque, Shri Suresh Prasad was earlier staying at Madipur and was your neighbor before he shifted to MIE Lines in Bahadurgarh. That Shri Suresh Prasad used to take your help in conducting his bank transactions with Central Bank of India, Madipur branch. That you were knowing Shri Suresh Prasad's Bank account number with Central Bank of India, Madipur branch. That sometimes back you telephoned Shri Suresh Prasad and informed him that you will be depositing a cheque in the name of Suresh Prasad in his account with Central Bank of India and that once the amount is collected, the same should be paid back to him. That you told Shri Suresh Prasad that obtaining the cheque in your name would result in lot of hue and cry and hence such an arrangement was resorted to. That about a week thereafter, you again telephoned Shri Suresh Prasad and advised him not to go to the bank as some one had deposited a stolen cheque in his account and that police would arrest him. That you also requested Shri Suresh Prasad not to reveal to anybody that he know you and said to him that you would sort out the issue. That later when Shri Suresh Prasad wanted to do his banking transactions and hence contacted you, you gave him copies of three letters addressed to Corporation Bank, Gujranwala Town branch by Zonal Office, Delhi and Anti Frauds Section, HO and told him that he could go to his bank and withdraw money as his name was not figuring in any of those letters. That however when Shri Suresh Prasad went to Central Bank of

India, Madipur branch, he came to know that operation in his bank account was freezed. That the Branch Manager of Central Bank of India also informed Shri Suresh Prasad to meet Manager of Corporation Bank, Gujranwala Town branch. That on 22.07.2009 Shri Suresh Prasad met the Branch Manager of Corporation Bank, Gujrawalan Town branch. That the above circumstances showed your intention to defraud the bank. That Corporation Bank, Gujranwala Town branch had not received the above referred three letters, but you provided copies of the said letters to Shri Suresh Prasad which showed that you intercepted them and deliberately removed the above letters with a view to keep the branch in the dark on eh directions made in the matter.

(viii) That by your aforesaid acts and omissions, you facilitated opening of a fictitious SB account No.7471, fraudulent collection of the Demand Drat for Rs.1.41 lakh, and fraudulent withdrawal of Rs. 5000.00 and dishonestly caused a financial loss of of Rs.5000.00 to the bank. That further, you also resorted to manipulation of bank records by clandestinely removing the photograph and photocopies of driving licence and PAN card from the account opening form and attempted to replace the same with certain other documents as stated earlier so as to prevent the identity of the impersonator. That you also attempted to fraudulently encash Rs.1,35,500.00 from SB account No.7417 by arranging to present cheque no.420012 in clearing through Central Bank of India, Madipur branch for the credit of SB account of Shri Suresh Prasad. That you intercepted the above referred three letters addressed to the branch with a view to keep the branch in the dark. That you also made available copies of such correspondence to Shri Suresh Prasad, resulting in unauthorized disclosure of information regarding affairs of the bank.

(ix) That your aforesaid acts and omissions are serious in nature and if proved, would be grossly detrimental to the interest of the bank and tantamount to:

- (a) unauthorized disclosure of information regarding the affairs of the bank or any of its customers or any other person connected with the business of the bank which is confidential;
- (b) willful damage or attempt to cause damage to the property of the bank or any of its customers;
- (c) doing any act prejudicial to the interest of the bank

gross misconduct under clauses 5(b), 5(d) and 5(j) respectively of the Memorandum of Settlement on Disciplinary Procedure dated 10.04.2002 applicable to you.”

10. Management was required to adduce fresh evidence before this Tribunal in order to prove validity of the charges mentioned above. Admittedly, no evidence worth the name has been adduced by the management so as to prove the allegations contained in the charge sheet. It is now well settled position in law that when domestic enquiry conducted by the management has been found to be defective, being tainted, unfair or against principles of natural justice etc., in that eventuality, management is required to adduce fresh evidence or bring fresh material on record so as to sustain the order of punishment passed against the workman. Legal position is well settled and Hon’ble Apex Court in a number of cases has held that right of the management to adduce additional evidence must be availed by it by making proper request for that purpose, which may even be contained in the pleadings or may be made at any time before the proceedings are closed. It was also observed that if such a request is made in the pleadings itself, the Tribunal has to give an opportunity to the management to lead fresh evidence. It was also clarified by the Hon’ble Apex Court in the case of *Neeta Kaplish vs Presiding Officer Labour Court and Anr.* AIR (1999) Lab.I.C.445) that record pertaining to the domestic enquiry would not be considered as ‘fresh evidence’ or ‘material on record’ within the meaning of Section 11A of the Act inasmuch evidence adduced to prove misconduct has been considered by the Labour Court and rejected. Hence, such record would also not constitute material on record within the meaning of Section 11A as enquiry proceedings, on being held to bad, have to be ignored altogether. Thus, it is not open to the management to rely upon the evidence of the domestic enquiry and the proceedings already conducted by the Enquiry Officer loses its evidentiary value when the Tribunal has given its findings on the preliminary issue and held the same to be unfair or being in violation of principles of natural justice.

11. Since in the case in hand, no evidence worth the name has been adduced by the management after findings have been given by the Tribunal on preliminary issue that the domestic enquiry conducted by the Enquiry Officer is not fair or bad in law, in such a situation, this Tribunal is left with no choice except to set aside the order of discharge dated 27.07.2010. Resultantly, charges contained in the charge sheet are held to be not proved against the workman herein. As such, order of discharge passed by the competent authority is, hereby, set aside.

12. As a corollary to the above, it is held that the workman herein is also entitled for reinstatement with immediate effect and payment of salary as well as all consequential benefits to which he is/was otherwise

entitled had he been in service. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : October 29, 2015

A. C. DOGRA, Presiding Officer

नई दिल्ली, 4 जनवरी, 2016

का.आ. 64.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, दिल्ली के पंचाट (संदर्भ संख्या 8/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.01.2016 को प्राप्त हुआ था।

[सं. एल-12012/11/2006-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 4th January, 2016

S.O. 64.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 8/2007) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in the Annexure in the Industrial Dispute between the management of Syndicate Bank and their workman, received by the Central Government on 04-01-2016.

[No. L-12012/11/2006-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-II, DELHI

Present:- Shri Harbansh Kumar Saxena

ID.No. 08/2007

Sh. Ashok Kumar,
S/o Sh. Murari Lal, R/o A-6,
Jainda Colony,
Fatehpur Beri,
New Delhi-110074

...Workman.

Versus

The Asstt. General Manager,
Syndicate Bank,
Zonal Office, Industrial Relation Cell,
Sarojini House,
6-Bhagwan Dass Road,
New Delhi-110001

...Management.

AWARD

The Central Government in the Ministry of Labour vide notification No. L-12012/11/2006-IR(B-II)) dated

15.02.2007 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the termination of service of Sh. Ashok Kumar, Ex-cashier from the services by the management of Syndicate Bank w.e.f. 19.7.2002 is just, fair and legal? If not to what relief the workman is entitled to and from which date?”

On 22.3.2007 reference was received in this Tribunal. Which was register as I.D No. 08/2007 and claimant union was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant filed claim statement on 7.06.2007. Through which he prayed as follows:-

A. To award the reinstatement of Sh. Ashok Kr, Cashier w.e.f. 19.07.2002 with full back wages alongwith all consequential benefits.

OR

B. To award lesser punishment i.e. reduction in basic pay by two stages for a period of two years in lieu of two punishments imposed by the management with full back wages alongwith all consequential benefits.

OR

C. To pass any other relief or Award as may be deemed fit and proper in the present case.

Against claim statement management filed written statement on 6.9.2015. Through which management prayed as follows:-

That the contents of the prayer claim statement are wrong and denied. It is denied that the workman is entitled to the relief claimed. The claim of the workman is misconceived and is liable to be rejected. The workman was punished after conducting fair and proper enquiry and was awarded punishment proportionate to the gravity of the misconducts committed by him. It is therefore prayed that this Hon'ble Court may kindly be pleased to reject the claim of the workman and answer the reference in favour of the management in the interest of justice.

ALTERNATIVE PLEA-

That without prejudice to the rights of the management it is submitted that the management has awarded the punishment to the workman after conducting a fair and proper enquiry into the matter. The management has placed on record of this Hon'ble Court all the record of the enquiry including the documents and proceedings and the evidence adduced before the enquiry officer and the findings of the enquiry officer. It is submitted on behalf of the management that a preliminary issue with regard to the fairness of the enquiry may kindly be framed and the

question with regard to fairness of the enquiry may be decided first and in the event this Hon'ble Court comes to the conclusion that the enquiry is vitiated for any reason, then in that eventuality the management prays for an opportunity to lead additional/fresh evidence to prove the charges against the workman before this Hon'ble court as per settled law.

Claimant on 28.9.2007 filed rejoinder. Through which he reaffirmed the contents of claim statement.

My. Ld. Predecessor on 13.04.2009 framed following issues:-

1. "Whether the enquiry conducted by the management is fair, proper and legal?"

On 28.11.2007 my Ld. Predecessor passed an order on order sheet fixed 18.12.2007 for disposal of preliminary issue of fairness of the inquiry.

Affidavit in evidence has been filed by workman on 13.04.2009 which was tendered on 6.1.2011 and 7.4.2011 was fixed for his cross-examination few dates have been fixed for cross-examination of workman. On 3.11.2011 it was informed to Tribunal that workman Sh. Ashok Kr. has died.

Application for substitution of L.Rs of deceased workman moved on 12.1.2012. Application for substitution of L.Rs of deceased workman has been allowed and his L.Rs has been brought on record in his place.

On 4.4.2013 my Ld. Predecessor passed an order on order sheet adjourned for evidence of the parties on the preliminary issue for 9.5.2013. Management to conclude first.

On 26.9.2013 MW1 Sh. K.A. Seeta Ram filed his affidavit and tendered it. None turn up to cross-examine him. Hence cross was marked nil.

Fixed 15.11.13 for remaining evidence of management/arguments.

Application for setting aside order of closing the right of cross-examination has been moved on behalf of L.Rs of workman. Which has been allowed on 19.12.2013 subject expenses of MW1 which was not deposited workman. Hence MW1 could not be summoned for cross-examination.

Arguments on preliminary issue heard by me.

Parties filed synopsis. Which are as follows:-

WRITTEN ARGUMENT OF BEHALF OF THE APPLICANT

MOST RESPECTFULLY SHOWETH:

1. The deceased workman joined the service of management way back in the year 1982 and serving the management with sincerity and honesty. The management was very happy from the conduct of the deceased

workman and therefore he is promoted to the post of 'Clerk' in the year 1998 after going through the departmental examination. Here it is not out of place to mention herein that the deceased workman was not eligible for the post of clerk due to his qualifications but due to his impeccable service record, he was promoted to the post of clerk in year 1998.

2. In the year 1998, the workman was posted at the post of clerk but he was also supposed to perform the function of cashier also. Here it is not wrong to mention that to handover the duties of a cashier to an ordinary clerk are clear evidence/proof of his remarkable performance in the management bank. There was hardly any complaint against the workman expect the present one.

3. The deceased workman received suspension order on October 11, 2001 on the grounds that while working as cashier, the workman accepted cash deposited by the customer towards the credit of their accounts, issued counterfoils after affixing cash received seal but did not accounts for the amount in the books of the branch on the same day and thus resorted to temporary misappropriation of the funds. The above said suspension order was passed under clause 19.12(b) of the Bipartite agreement. On 8/14th February, 2002 the workman received a charge sheet by the disciplinary authority of the bank, a relevant para of which reads as under:

- A. "The above circumstances go to indicate that on four occasions you accepted Rs. 50,200/- in aggregate deposited by the customer towards their SB accounts, temporarily misappropriated Rs. 20,000/-, misappropriated for yourself Rs. 30,200/- and to conceal your fraudulent acts you issued fake counterfoils to the depositors without obtaining the signature of the scroll officer as required vide HO Cir. No. 168/93/BC. In the process you tarnished the fair image of the Bank. Your above acts constitute misconduct within the meaning of Clause No. 19.5 of the bipartite settlement.
- B. Smt. B.D. Grover filed a recovery suit against the workman in the Hon'ble Court of Civil Judge, Tis Hazari, Delhi. The court vide order dated 12-08-2000 issued warrant for attachment of the salary of the workman for recovery of Rs. 24,089/- from him. Sum of Rs. 1447/- was recovered from the workman salary every month and the dues were cleared in the full settlement by May, 2001.

4. Here the management did not consider that many issues were created by the management and were arbitrary and unnecessarily been imposed upon the workman. The case of B.D. Grover was the personal matter of the workman which had nothing to do with the management. The matter

was already been decided by the order of Hon'ble concerned Court dated 12.08.2000. However, the said matter was added in the charge sheet just to harass the workman. The present case pertains to year 2001 and the B.D.Grover case was decided by the Hon'ble concerned Court in the year 2000, the mentioning of disposed off suit is nothing but a way to harass the workman.

Also it is prevailing scenario that the punishment ought to be in consonance with the type of offence committed. Here in the charge sheet, the workman was burdened for the wrong which he had never committed in official capacity.

Needless to mention that resorting to outside borrowing by the workman does not fall in any of the sub-clauses mentioned in the paragraphs 19.5 of the Bipartite Agreement.

5. And so far as the amount of Rs. 20,000/- (Rs. Twenty Thousand) is concerned, the said amount was deposited by the customer in the noon time of 24.09.2001 and the same amount was deposited by the workman in the bank on the very next day i.e. 25.09.2001 without delay. The very same fact is reflecting from the roll of the bank which is clearly showing the date when the amount was deposited by the workman. Here also the management played its game cleverly and charge sheeted the workman. Interestingly the customer did not lodge any complaint with the bank till the time when the amount was deposited. The complaint was given after long good time by the customer.

Here also the bank played its witty game against the workman and made him responsible for the wrong which he has never committed.

6. The remaining amount of Rs. 25,000/- and Rs. 5,200/- was admitted by the workman.

7. However, the departmental enquiry was started against the workman for the entire points/ allegations mentioned over the charge sheet. The departmental enquiry was biased since day and against the basic principle of "Natural Justice".

The Clause 19.12 of Bipartite Agreement clearly states the procedure which is to be adopted in Disciplinary Enquiry. However, the relevant provisions were violated at every stage of the enquiry. The workman was not given a reasonable opportunity to be represented by suitable person.

8. During the enquiry, the workman brought notice to the fact that during his tenure though he requested for leave on several occasions on ground of his illness, the same was refused due to the closing month of the bank. It was also submitted that at the relevant time his duty was in the Loan Department at Fatehpur Beri Branch of the Bank. However, for preparation of Balance Sheet etc.

Smt. A. Nagmani, who was holding the cashier seat, was shifted from cash counter and deputed to that seat even though the applicant was not in good health. The workman requested the Branch Manager that since he is not well, he may not be posted at the cash counter but the Branch Manager ignoring the plea of the workman deputed the workman. It is specifically pleaded that as per the proceeding of the bank during 1st and the last week of very month, there are always two separate cash counters one for receipts and other for the payments. Despite the fact that the period in question was a last week of the month that too of closing month, and that the workman was posted alone to look after the cash counters for both receipts and payments. Since he was not keeping well and was under a great mental tension, a mistake occurred. The fact that he was not well and was suffering from serious ailment is clear from the fact that he attended the office only upto 1st October, 2001 and was on bed rest thereafter. While he was on bed rest he was suspended, as stated earlier, by order dated 11th October, 2001.

9. It is pertinent to mention here that the charges framed so as to increase the gravity of the offence of the offence alleged against the applicant and were clearly malafide and arbitrary.

10. The enquiry officer submitted his report on 11.06.2002 and found the workman guilty of the charges leveled against him. Here it is further important to mention that the enquiry officer while deciding the point wrote that the written brief submitted by the workman does not deserve any merit for consideration as they do not mitigate the charges/ allegations leveled against him.

The entire episode of departmental enquiry was just a formality as the management has decided to punish the workman before entering in the departmental proceeding. The management was predetermined in respect of the workman.

11. On 29.06.2002, the disciplinary authority accepted the report of the enquiry officer and imposed two punishments (a) dismissal from services with immediate effects (b) reduction in basic pay by two stages for a period of two years.

Here both the punishments were on the higher side as compare to the wrong committed by the workman. The amount of Rs. 20,000/- was justified as the workman has deposited the amount on the very next day and the B.D. Grover case was in his personal capacity where the management had nothing to do. The management imposed such a severe punishment for misappropriation of Rs. 30,200/- for which the workman has given his detailed apology to the management.

Here it will not be wrong to mention that the said amount of Rs. 30,200/- is already been reimbursed by the management from the workman.

12. Every provision of the Bipartite Agreement was ignored by the management in this very case. The relevant provision of the Bipartite Agreement is reproduced herein for the very kind perusal of the Hon'ble Tribunal:

- (c) in awarding the punishment by way of disciplinary action the authority shall take into account the gravity of misconduct, the previous record, if any, of the employees and any other aggravating or extenuating circumstances that may exist, where sufficiently extenuating circumstances exist the misconduct may be condoned and in case such misconduct is of the gross type he may be merely discharged, without notice or on payment of a month's pay and allowances, in lieu of the notice. Such discharge may also be given where the evidence is found to be insufficient to sustain the charges and where to retain the employee in question any longer in service. Discharge in such cases shall not be deemed to amount to disciplinary action.

13. The workman also filed an appeal against before the appellate authority but in vain and the appeal was dismissed by the appellate authority.

14. It is given in Law of India that the punishment must be in proportion with the wrong committed by a wrong doer. Here an innocent was given punishment without considering the nature of wrong, the service record of the workman, the behavior of the workman and moreover the basic principles of natural justice.

Surprisingly, on one hand the management has said that the wrong has tarnished the image of their bank and on the other hand, the bank did not lodge any FIR against the workman which is indigestible. If the management was such an aggrieved party, it should have lodged a FIR against the workman with immediate effects. The punishment imposed upon the workman was not at all just and fair.

The workman expired and his legal representatives came on record and since then they are the victim at the hands of the management. Neither the management is releasing the amount retained by them as statutory allowance nor giving them any other relief. It is humble submission of the legal representatives of the workman to the Hon'ble Tribunal to kindly decide the matter on the principles of natural justice which have been violated by the management at every stage for the sake of their own convenience and to give justice to the deceased workman.

WRITTEN ARGUMENT OF BEHALF OF THE MANAGEMENT

1. That in the present case the workman was served with charge sheet dated 31.12.1996 followed by corrigendum dated 27.3.1997 for the following misconduct:-

- i. That the workman was working as attendant in the bank and in his application for seeking employment he has stated that he has passed the middle examination in 1974 from Kishore Raman Inter College Mathura and submitted a certificate with registration No.12624 in support of his claim. He has also stated his education qualification the year of passing VIII standard as 20.2.1974 vide his application for promotion as required vide circular No.137/89/BC dated 8.5.1989. Subsequently the workman submitted another certificate bearing No.19322 dated 3.5.1995 purportedly issued by same college certifying that the workman was the regular student of VIII class in 1974 and passed the said class. However subsequently it was revealed that the certificate /mark sheet submitted by him at the time of seeking employment were forged/false and thus he made false statement
- ii. That for his gross-misconduct he was charge sheeted for (i) knowingly making a false statement in any document pertaining to or in connection with his employment with the bank vide clause No.19.5(m) and (ii) for doing acts prejudicial to the interest of the bank vide clause 19.5 (j) of the bi-partite settlement.

2. The workman field reply to the charge sheet which was found not satisfactory as such the disciplinary authority ordered for departmental enquiry. The enquiry was conducted as per the provisions of bipartite settlement and service conditions applicable to the workman and full and fair opportunities were given to the workman to defend himself. The workman was provided with copies of all the documents filed before the enquiry officer and also the documents sought by him during the enquiry. The workman was represented by the defence representative in the proceedings and all the witnesses were cross-examined by the defence representative of the workman. The enquiry officer has drawn his conclusions and findings based on the documentary as well as oral evidence and after proper analysis submitted his report to the disciplinary authority and held that the workman is guilty of charges levelled against him as per chargesheet. The copy of the enquiry report was forwarded to the workman. The workman did not make any submissions for the reasons best known to him. The disciplinary authority proposed the punishment of dismissal from the services of the bank for each of the misconduct and gave opportunity of personal hearing to the workman on 3 occasions but the workman did not utilize the same and failed to appear. The disciplinary authority concurred with the findings of the enquiry officer and confirmed the proposed punishment vide order dated 7.4.1998. The workman thereafter preferred appeal to the appellant

authority. The appellant authority after giving the personal hearing and after examining the entire material place on record and considering the submissions made by the workman concurred with the disciplinary authority and confirmed the punishment awarded of the workman vide order dated 12.11.1998.

3. That the management has placed on record the entire record of the enquiry officer, which clearly shows that the enquiry was conducted as per the provisions of bipartite settlement and the principles of natural justice were duly followed by the enquiry officer. The workman was given full opportunity to defend himself. He was given copies of all the documents filed in the enquiry and also the documents demanded by him, he was defended by defence representative and cross-examined all the management witnesses. The workman was also given the opportunity to produce his defence evidence, the workman produced himself only as a witness in support of his defence and did not produce any other witness.

4. That in the claim statement filed by the workman, the workman has failed to point out any defect in the enquiry rather only objection raised by him was that the findings were perverse and there is violation of provisions of natural justice. The claimant failed to mention how the findings were perverse or principles of natural justice were followed.

5. That it is submitted that in the enquiry the management has produced one witness G.T. Chikkodi who investigated the matter and stated that he personally visited the Mathura and met Principal of Kishori Raman Inter College and verified the certificates submitted by the workman and he presented 19 documents MEX-1 to MEX-19. The letter dated 7.10.96 MEX-19 was letter written by the Principal of Kishori Raman Inter College on the letter head of the school informing that the certificates submitted for verification were wrong and forged and fabricated and further confirming that there was no such person Fateh Singh S/o Sohan Lal under Sr No.12624 in the records of the school. The witness stated that certificates produced by the workman are not on the school letter head and it does not tally with the other letters of the school and the certificates do not mention the class in which the workman has passed the 8th standard. The said witness was cross-examined by the workman.

6. That from the enquiry proceedings placed on record it is clear that the finding given by the enquiry officer were on the basis of deposition of witness and documents MEX-1 to MEX-19 produced in the enquiry as such they can not be perverse the workman has leveled baseless allegations.

7. That the workman appeared in the witness box before this Hon'ble court and admitted that "It is correct that the enquiry officer has given ample opportunity to prove my

case or to submit my defence. It is correct that enquiry was conducted fairly and I was given full opportunity to defend myself". The management produced the enquiry officer as a witness who stated that enquiry was conducted as per the service conditions applicable to the workman and in accordance with the principles of natural justice.

8. That it is submitted that the findings given by the enquiry officer are on the basis of evidence and documents filed on record and cannot be interfered with.

9. That it is submitted that the findings given by the enquiry officer are on the basis of deposition of evidence and he has formed this opinion after analyzing all the evidence and the material on record therefore the same cannot be interfered with in any manner. The sufficiency or insufficiency of the evidence before the enquiry officer also cannot be gone into. The workman has failed to point out any procedural defect in the enquiry. It is therefore is submitted that the findings given by the enquiry officer are based on the evidence adduced during enquiry and cannot be interfered with.

11. It is submitted that as per resettled law as held in AIR 1982 SC 673 that in a domestic enquiry the strict rules of the evidence under Evidence Act are not applicable. There is no allergy to hearsay evidence. The sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny.

1996 LLJ(1) 1231 the Tribunal in its power of review does not act as appellate court to re-appreciate the evidence and arrive at its own findings.

1999 (5) SCC 762 & 2006 (6) SCC 255 that it is well settled principal of law that a conclusion or a finding arrived at domestic enquiry can only be interfered when there is no evidence to support the finding and not otherwise. If on the basis of the evidence the E.O. forms a particular view the same cannot be rejected simply because other view was possible.

12. It is submitted that the findings given by the enquiry officer were based upon the oral as well documentary evidence and the witnesses now it is not open for the workman to challenge the finding of the enquiry officer and ask for re-appreciation of the entire evidence before the enquiry officer. The enquiry officer has given its reasons for arriving at the conclusions which are based on the evidence adduced by the management.

13. That the workman himself has admitted that enquiry was conducted fairly and he was given full opportunity to defend himself thus it is proved that the enquiry conducted by the management is fair and proper and therefore pray that this Hon'ble Court may kindly be pleased to decide the issue of fairness of enquiry in favour of the management.

I passed detailed order on 1.10.2015 deciding preliminary issue in favour of management & against workman. Fixed 8.10.2015 for oral arguments on proportionality of punishment.

In the light of contentions and counter contentions. I perused the pleadings of claim statement, written statement and rejoinder and evidence of parties on record including principles laid down in cited rulings as well as settled law on the point of punishment of misconduct.

Perusal of record makes it crystal clear that it was first instance of misconduct of workman wherein he was found guilty of misconduct and punishment of dismissal was awarded to him.

It is admitted fact punishment of dismissal is the extreme penalty for misconduct of workman wherein he was found guilty of misconduct and punishment of dismissal was awarded to him. It is admitted fact punishment of dismissal is the extreme penalty for misconduct. Which should be awarded in rarest of rare case. It is also admitted fact workman Sh. Ashok Kr. has died during pendency of instant industrial dispute and his dependents/L.Rs have been substituted in his place. Out of his L.Rs one is widow aged mother of workman, one is wife of deceased workman and another is unemployed son of deceased workman.

In case of dismissal of deceased workman nothing will be paid to the aforesaid L.Rs of deceased workman. Which may help for their survival at least for few days. Ld. A/R for deceased workman stressed that deceased workman joined the services of management in 1982 as peon but on account of his good conduct and his impeccable record he was promoted as clerk in 1998 after passing the departmental examination.

In 1998 deceased workman was posted as clerk but he was also supposed to perform the function of cashier also. Which is indicative of fact that performance of Deceased Workman was remarkable in the management Bank. There was no complaint against Deceased Workman except the complaint of the instant I.D.

Deceased Workman received suspension order on 11.10.2001.

On 8/14.2.2002 the Deceased Workman received charge sheet by disciplinary authority of the management Bank according to which charge against Deceased Workman is that he accepted Rs. 50,200/- in aggregate deposited by the customers towards their Saving Bank Accounts, temporarily misappropriated.

So far as the amount of Rs. 20,000/- is concerned, it was deposited by the customer in the noon time of 24.09.2001 and the same amount was deposited by the Deceased Workman in the bank on the very next day i.e. 25.9.2001 without delay. In this matter customer did not

lodge any complaint with the bank till the time when the amount was deposited on 25.9.2001. Such suspicious and manipulated complaint was made after inordinate delay by the customer without any plausible reason. But such inordinate delay in lodging complaint was neither considered by Enquiry Officer nor disciplinary authority while punishing deceased workman. If effect of inordinate delay has been considered then that would have been in favour of deceased workman.

This fact was also brushed aside as a trivial fact that Smt. B.D. Grover filed a recovery suit against deceased workman in the Court of Civil Judge, Tis Hazari Delhi. The court vide order dated 12.08.2000 issued warrant of attachment of the salary of the workman for recovery of Rs. 24,089/- from him. Sum of Rs. 1447/- was recovered from the workman salary every month and the dues were cleared in may, 2001.

Thus the B.D. Grover case was in his personal capacity where the management had nothing to do.

The management imposed such a severe punishment for alleged misconduct of misappropriation of Rs. 30,200/- for which the workman tendered his detailed apology to the management. So awarded punishment of dismissal to deceased workman by management Bank is disproportionately excessive hence this Tribunal in exercise of its discretion u/s 11-A of I.D. Act, 1947 can reduce the punishment.

Ld. A/R for the deceased workman placed reliance on principles laid down by Hon'ble S.C. in following cases:-

1. Kailash Nath Gupta Vs. Enquiry Officer (R.K.Rai) Allahabad Bank and other.

(2003) 9 Supreme Court cases 480.

2. Dev Singh Vs. Punjab Tourism Development Corporation Ltd. and another.

(2003) 8 Supreme Court cases 9.

Ld.A/R for deceased workman also placed reliance on principle laid by their Lordship of Hon'ble Delhi High Court, while deciding W.P.(C) 3402/2005 S.K. Habibur Rehman Vs. UOI & Ors. on 3.8.2015.

On the basis of aforesaid contentions Ld. A/R's of deceased workman stressed that punishment awarded to deceased workman is not in proportion of his misconduct so liable to be reduced in the interest of justice u/s 11-A of I.D. Act.

While on the other hand Ld. A/R for management replied that punishment of dismissal awarded to workman was just and proper as the workman misappropriated customer's money and the same cannot be said to be excessive and cannot be interfered workman cannot ask for sympathy to reduce punishment.

He placed reliance on principles laid down in case of Janatha Bazor Vs. The Secretary, Sahakari Noukarara Sangha 2000 L.L.R. 1271 S.C. as well in case of Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc. 2005 AIR (S.C.) 1993.

It is relevant to mention here that Bank deals in public money.

It is also relevant to mention here that at the time of awarding punishment for misconduct. It is seen whether it is first instance of misconduct by delinquent employee or not. If not then what punishment earlier for such misconduct was awarded.

If delinquent commits misconduct of similar nature again then severe punishment of dismissal can be awarded. Then it will be justified.

This principle has been laid down in case of Punjab National Bank Vs. The Labour Court & Ors. 2015 LLR 1007 by his Lordship of Kerala High Court on the basis of settled law.

Workman was not previous convict of misconduct hence extreme penalty of dismissal from services is not warranted. Which requires modification from dismissal to removal from services of deceased workman so that his statutory dues may be released in favour of his L.Rs Punishment of dismissal /termination from services of deceased workman is accordingly modified to removal from services of deceased workman with direction to management to pay off statutory dues to L.Rs of deceased workman within two months after expiry of period of available remedy against award.

Reference is liable to be decided in favour of Deceased workman and against Bank Management. Which is accordingly decided and claim statement is allowed.

Award is accordingly passed.

Dated : 23/11/2015

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 4 जनवरी, 2016

का.आ. 65.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-2, दिल्ली के पंचाट (संदर्भ संख्या 64/09) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.01.2016 को प्राप्त हुआ था।

[सं. एल-12012/52/2009-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 4th January, 2016

S.O. 65.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award (Ref. No. 64/09) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in the Annexure in the Industrial Dispute between the management of Syndicate Bank and their workman, received by the Central Government on 04-01-2016.

[No. L-12012/52/2009-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-II, DELHI

Present:- Shri Harbansh Kumar Saxena

ID. No. 64/09

Sh. Sunil Kumar Sharma,
S/o Sh. Dayal Sharma,
Vill Saifani, P.O. Saifani,
Tehsil Shahbad,
Rampur (UP).
Rampur

...Workman

Versus

1. Regional Manager,
Syndicate Bank, Regional Office,
1st Floor, R-1177, Raj Nagar,
Ghaziabad.
Ghaziabad (U.P.)
2. Branch Manager,
Syndicate Bank,
Dharampur Kalam Branch, Bilari,
Moradabad (U.P.)

...Management

AWARD

The Central Government in the Ministry of Labour vide notification No.L-12012/52/2009(IR(B-II)) dated 6.10.2009 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of the management of Syndicate Bank in disengaging/terminating the services of Sh. Sunil Kumar Sharma workman w.e.f 20.12.2007 from Dharampur Kalan Branch of the Bank without any notice and compensation under section 25(F) (G) and (H) of the I.D. Act, 1947 is legal and justified? What relief the concerned workman is entitled to?”

On 14.10.09 reference was received in this Tribunal. Which was register as I.D No. 08/2007 and claimant union was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant filed claim statement on 18.02.2010. Through which he prayed as follows:-

It is therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to reinstate the services of the claimant and the management be directed to give all back wages till date alongwith the salary and other incentive and dues w.e.f. 20.12.2007 onwards to the claimant and the management further be directed to pay the aforesaid amount of Rs. 30,220/- to the claimant, which was illegally withheld by the management, in the interest of justice.

Any other and further relief which this Hon'ble Court may deem fit and proper may also be passed in favour of the claimant and against the management.

Against claim statement management filed written statement on 13.05.2010. Through which management prayed as follows:-

"That the contents of the prayer clause are wrong and denied. It is denied that the claimant is entitled to the relief claimed. The claim of the claimant is misconceived and is liable to be rejected. It is therefore prayed that this Hon'ble Court may kindly be pleased to reject the claim of the claimant and answer the reference in favour of the management in the interest of justice.

Claimant on 12.08.2010 filed rejoinder. Through which he reaffirmed the contents of claim statement.

My Ld. Predecessor has not framed any issue but proceeded to adjudicate the questions of determination mentioned in schedule of reference.

Workman in support of his case filed his affidavit on 2.12.2010. Which was tendered by him on 11.04.2013 and he was cross examined on same day.

Management in support of its case filed its affidavit on 29.08.2013. Which was tendered by management and cross-examined on 6.03.2014.

I have heard the oral arguments of Ld. A/R's for the parties .

Parties also filed written arguments.

Ld. A/R for the workman stressed that workman in support of his case produced workman. Through, his evidence he tried to prove that workman worked continuously for 240 days in a calendar year and breach of S. 25-B(2)(ii) and S.25-F, G, H of ID. Act and S.114 (g) Indian Evidence Act. Hence his termination is illegal and unjustified. Hence workman is entitled for reinstatement with back wages.

Ld. A/R for the workman placed reliance on principles laid down in following rulings mentioned in written arguments.

Photocopies of which have been filed by Ld. A/R for the workman.

Ld. A/R for the management through its oral and written arguments counter contended that workman has

not worked continuously in management for 240 days in any of the calendar year. Hence not entitled to reinstatement.

Ld.A/R for the management placed reliance on principle laid down in cited rulings mentioned in written arguments. Photocopies of which have also been filed by Ld. A/R for the management.

On the basis of which Ld. A/R for the management pressed that appointment of workman has not been made according to prescribed procedure. Hence principle laid down in case of Uma Devi by constitutional Bench of their lordship of Hon'ble Supreme Court applies with full force in the instant case.

He also pressed that workman has not filed any proved documentary evidence in support of his claim. He also pressed that workman has not availed his right of summoning the documents alleged to be in the possession of management as per provision of 11(3) I.D. Act. Hence, no adverse inference can be drawn against management u/s 114(g) of Indian Evidence Act.

He also stressed that workman tried to fill up this lacuna by moving an application u/s 11(3) I.D. Act after belated stage. Which was rejected by this Tribunal. Against which no remedy by workman has been sought by way of filing available remedy against the rejection order. So order of rejection of application u/s 11(3) ID. Act has become final.

He finally stressed at the most workman is only entitled for compensation.

In the light of contentions and counter contentions. I perused the pleadings and evidence of parties on record alongwith settled law and principles laid down in cited rulings and provisions of section 25-B(2)(ii), 25-F, G, H of I.D. Act and section 114 (g) Indian Evidence Act. Which makes it crystal clear that section 25-B (2) (ii) ID. Act and 114 (g) Indian Evidence Act are in applicable in want of required evidence of workman but section 25-F of ID Act applies with full force in the instant case as retrenchment compensation has been given to workman while retrenching him.

It is admitted fact that present reference relating to present Industrial Dispute has been sent to this Tribunal by Labour Ministry for adjudication. It is also admitted fact that available remedy against reference is writ-petition which was not availed by management. So order of reference passed by Labour Ministry for adjudication has become final. Nature of workman may be what so ever.

This fact is proved fact that retrenchment compensation as required by section 25-F of ID.Act has not been paid to workman Sh. Sunil Kumar. Hence disengagement/ termination of Sh. Sunil Kumar, is not legal and justified. Question of determination no.1 mentioned

in schedule of reference is liable to be decided in favour of workman and against management but on this count workman is entitled only for retrenchment compensation as per provision of 25-F of ID. Act.

As per settled law Hon'ble Supreme Court retrenchment compensation of Rs. 50,000 (Fifty Thousand) is liable to be awarded to workman Sh. Sunil Kumar. Aforesaid question of determination no. 2 relating to relief is liable to be decided in favour of workman and against management. Management is liable to be directed to pay the aforesaid retrenchment compensation Rs. 50,000/- to workman Sh. Sunil Kumar within reasonable time which is accordingly decided.

Reference is liable to be decided in favour of workman and against management and management is liable to be directed to pay aforesaid retrenchment compensation of Rs. 50,000 (Fifty Thousand) to workman Sh. Sunil Kumar within two months after expiry of period of limitation of available remedy against this Award. Which is accordingly decided.

Award is accordingly passed.

Dated:-16/12/2015

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 4 जनवरी, 2016

का.आ. 66.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स दिल्ली इंटरनेशनल एयरपोर्ट (प्रा.) लि./सिंधु ट्रेड लिंक लि./ब्लैक एंजिल्स सेक्यूरिटी सर्विसेस प्रा. लि. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 52/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/01/2016 को प्राप्त हुआ था।

[सं. एल-11011/21/2013-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 4th January, 2016

S.O. 66.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 52/2014) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Delhi International Airport (P) Ltd./Sindhu Trade Link Ltd./Black Angels Security Services P. Ltd. and their workman, which was received by the Central Government on 01/01/2016.

[No. L-11011/21/2013-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, DELHI

ID No. 52/2014

Shri Naveen Kumar & Others through
The General Secretary,
Hindustan Engineering General Mazdoor Union,
D2/24, Sultanpuri,
New Delhi ...Workman

Versus

1. The Manager,
Delhi International Airport (P) Ltd.
New Udaan Bhawan,
New Delhi 110 037
2. The Manager,
M/s Sindhu Trade Link Ltd.
C-11, near Gold Jim,
Rajouri Garden,
New Delhi
3. The Manager,
M/s Black Angels Security Services Pvt. Ltd.,
Plot No.5, Vijay Vihar, Silokhara,
Sector 30, Behind Part Centre,
Gurgaon ...Managements

AWARD

Central Government, vide letter No.L-11011/21/2013-IR(M) dated 04.04.2014, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of DIAL/ Sindhu Trade Link Ltd./Black Angels Security Services Pvt. Ltd. in terminating/not regularizing the services of Shri Naveen Kumar, Ranveer, Laxman, Ashok, Ravi Shankar, Rajinder, Yogesh, Ex-trolley retriever with effect from 26.09.2013, 26.09.2013, 26.09.2013 and 17.10.2013 respectively is justified or not? If not, what relief will be given to the workman and from which date?

2. In the reference order, the appropriate Government commanded the parties to the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, the claimant union opted not to file his claim statement with the Tribunal.
3. On receipt of the above reference, notice was sent to the claimant union as well as the managements. Neither the postal article, referred above, was received back nor was it observed by the Tribunal that postal services

remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant union. Despite granting of several opportunities, the claimant union opted not to file its statement of claim. Thus, it is clear that the workman union is not interested in adjudication of the reference on merits.

4. Since the workman union has neither filed its statement of claim nor have they led any evidence so as to prove their cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : December 16, 2015

A.C. DOGRA, Presiding Officer

नई दिल्ली, 4 जनवरी, 2016

का.आ. 67.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एयर इंडिया लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय, ईर्नाकुलम के पंचाट (संदर्भ संख्या 13/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/01/2016 को प्राप्त हुआ था।

[सं. एल-11012/04/2014-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 4th January, 2016

S.O. 67.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam (Ref. No. 13/2014) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Air India Ltd. and their workmen, which was received by the Central Government on 04/01/2016.

[No. L-11012/04/2014-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present:

Shri.K. Sasidharan, B.Sc., LLB, Presiding Officer

(Wednesday the 16th day of December, 2015/
18th Agrayayana, 1937)

ID 13/2014

Union : The General Secretary,
Airline Casual Employees Association,
CITU, Thaveri House, Avanamkode,
Chowwara, Ernakulam - 683571

By Advs. Shri T.C. Krishna &
Shri C. Anil Kumar

Management : The Executive Director,
M/s. Air India Ltd., 19,
Rukmani Lakshmi Pathy Road,
Egmore, Chennai - 600008

By Adv. Shri Benny. P. Thomas

This case coming up for final hearing on 07.12.2015 and this Tribunal-cum-Labour Court on 16.12.2015 passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India/Ministry of Labour vide its Order No-L-11012/04/2014-IR(CM-I) dated 28.02.2014 referred the industrial dispute scheduled thereunder for adjudication to this tribunal.

2. The dispute is:

“Whether the action of the Management of Air India Ltd. Chennai in withdrawing the benefit of weekly off wages and paid National Holiday/Festival holiday to the Airlines casual employees is correct? To what relief the Union is entitled to?”

3. After receiving the reference Order No. L-11012/04/2014-IR(CM-I) dated 28.02.2014, summons was issued to the parties to appear and answer all material questions relating to the aforesaid dispute and produce documents to substantiate their respective contentions. On receipt of the summons the parties entered appearance through respective counsels. The union filed claim statement. Thereafter the matter was posted for filing written statement by the management. In the meantime the General Secretary of the union filed a memo which reads as follows:

- “1. The issue referred for adjudication in the above industrial dispute is with regard to the correctness of the action of the management of Air India Ltd in withdrawing the benefit of weekly off wages and paid National Holidays/Festival Holidays to airline casual employees.
2. Union had on 10/6/2004, submitted a charter of demand before the management in which the benefit of weekly off wages and paid national holidays/festival holidays were also included. As the management refused to accept the

demands of the Union, the issue was referred to this Honourable Court. By an award dated 4/12/2008 in ID No. 69/2006 this Honourable Court rejected all the main claims in the charter of demands submitted by the Union. Union challenged the said award before the Honourable High Court of Kerala in WP (C) No.12008/09. By judgment dated 9/10/2014 the award was set aside and the matter has been remanded for fresh consideration. A copy of the judgment is yet to be received.

3. The right of the workers of Air India to claim the benefit of weekly off and paid National/Festival Holidays is one of the issues in ID 69/2006. In the circumstance, the above industrial dispute may be closed reserving the right of the Union to agitate the issues referred in ID 69/2006."

4. Copy of this memo was given to the counsel for the management.

5. Heard the learned counsels appearing for both sides.

6. In view of the memo filed by the General Secretary of the union requesting to close this reference reserving the right to agitate the issue referred in ID 69/2006, it is not necessary to have a detailed adjudication of the dispute as per the reference order in this case.

7. Therefore, the issue referred for adjudication is answered to the effect that the parties are at liberty to agitate the matter in the earlier ID 69/2006, as per the directions in the judgment passed by the Hon'ble High Court of Kerala in WP(C) No.12008/2009.

The award will come into force one month after its publication in the Official Gazette.

SASIDHARAN K., Presiding Officer

APPENDIX - NIL

नई दिल्ली, 4 जनवरी, 2016

का.आ. 68.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 152/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/01/2016 को प्राप्त हुआ था।

[सं. एल-20012/594/1997-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 4th January, 2016

S.O. 68.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad (Ref. No. 152/2001) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 04/01/2016.

[No. L-20012/594/1997-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT:

Shri R. K. Saran, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 152 OF 2001

PARTIES : Shri L.P. Singh,
Secretary,
Rastriya Colliery Mazdoor Sangh,
Rajendra Path, Dhanbad-826001

Vs.

The General Manager,
Sijua Area of M/s BCCL,
PO: Sijua, Dhanbad

Order No. L-20012/594/97IR (C-I)
dt. 14.05.2001

APPEARANCES:

On behalf of the workman/Union : None

On behalf of the Management : None

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 27th November, 2015

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/594/97-IR (C-I) dt. 14.05.2001.

SCHEDULE

"Whether the demand of the Rastriya Colliery Mazdoor Sangh for regularization of the workmen Saheb Raja & 12 others into Cat. I and pay and other subsequent allowances be paid accordingly by the Management of Mudidih Colliery of M/s BCCL, is proper and justify? If yes, to what relief are they entitled and from which date?"

2. None is reported either from the Sponsoring union/workmen or the Management side on date. Though several

opportunities were provided to both the parties to move ahead on the stage of evidence of the workmen. In the series of disposing, the last two Notices dtt. 17.10.14 & 24.07.14 were also moved on the addresses of the both the litigant parties but no avail. The case is related to regularization of the workmen to the scale to which they used to work and other consequential benefits accordingly, based on the scale.

The status of the case of the workmen as reflected through the case record put much weight behind the fact that the workmen or their Sponsoring Union are no longer interested to get it to final adjudication through trails rather prefer to keep mum, and the same line the Management also toes. Despite providing sufficient opportunities for appearance and their negative trend, the Tribunal holds the justification to drop all the further proceedings just to avoid sheer wastage of time and energy. Accordingly the case is disposed of as 'No Dispute Award' due to disinterestedness. Hence a "No dispute Award" is passed.

R. K. SARAN, Presiding Officer

नई दिल्ली, 4 जनवरी, 2016

का.आ. 69.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 41/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/01/2016 को प्राप्त हुआ था।

[सं. एल-20012/250/2004-आईआर (सी-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 4th January, 2016

S.O. 69.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad (Ref. No. 41/2005) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 04/01/2016.

[No. L-20012/250/2004-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT:

Shri R.K.Saran, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947

REFERENCE NO. 41 OF 2005

PARTIES : The Branch Secretary,
Bihar Colliery Kamgar Union,
East Bassuriya Colliery, PO: Kusunda,
Distt: Dhanbad

Vs.

The General Manager,
Kusunda Area of M/s BCCL,
PO: Kusunda, Distt: Dhanbad

Order No. L-20012/250/2004-IR(C-I)
dt. 31.03.2005.

APPEARANCES:

On behalf of the : None
workman/Union

On behalf of the : Mr.U.N.Lal, Ld. Advocate
Management

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 30th November, 2015

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/250/2004-IR(C-I) dt. 31.03.2005.

SCHEDULE

"Whether the action of the Management of BCCL, Kusunda Area in denying the benefit of VRS (F) to Smt. Sumitri Kamin, Security Guard is just, fair and legal? If not, to what relief is the workman or her dependant son entitled?"

2. None appeared on behalf of the Sponsoring Union or workwoman nor did file much awaited the rejoinder. Mr. U.N.Lal, Ld Advocate for the Management is present on date. The case is crawling on the stage of filing of rejoinder by the both sides since 21.07.2006 but no further initiatives advanced till date from either side after having consumed almost eight times, and keeps posting date after date. The case is related to denial of benefits of VRS (F) to Smt. Sumitri Kamin, Security Guard by the Management of Kusunda Area of M/s. BCCL.

On the sum up of the case, it appeared that the workwoman/Sponsoring Union seems reluctant to move further as the case is expected to have been resolved or sorted out during the pendency of the case in the Tribunal. The Management also did not move further from the stage, the case stands. So the Tribunal do not see any further logic to drag it into the finale adjudication due to loss of

interest particularly of the Sponsoring Union despite providing so much times . Under these circumstances and in the interest of justice, the case is closed and accordingly an Award of 'No Dispute is passed.

R. K. SARAN, Presiding Officer

नई दिल्ली, 4 जनवरी, 2016

का.आ. 70.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 07/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/01/2016 को प्राप्त हुआ था।

[सं. एल-20012/125/2007-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 4th January, 2016

S.O. 70.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad (Ref. No. 07/2008) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 04/01/2016.

[No. L-20012/125/2007-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT :

Shri R.K.Saran, Presiding Officer

In the matter of an Industrial Dispute under Section
10(1) (d) of the I.D. Act, 1947

REFERENCE NO. 07 OF 2008

PARTIES : The Jt. General Secretary,
Jharkhand Janta Mazdoor Sangh,
Near Qr. No. IA-373, Koyla Nagar,
Dhanbad

Vs.

The General Manager,
Kustore Area of M/s BCCL,
Post: Jharia, Dhanbad

Order No. L-20012/125/2007-IR(CM-I)
dt.07.01.2008

APPEARANCES :

On behalf of the : Mr. Pintu Mandal,
workman/Union Union Representative

On behalf of the : Mr.D.K.Verma, Ld.Advocate
Management

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 30th November, 2015

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/125/2007-IR (CM-I) dt.07.01.2008.

SCHEDULE

“Whether the action of the Management of Borragarh Colliery of M/s. BCCL in dismissing the services of Sh.Arjun Bhuia, Miner Loader w.e.f. 25.04.2006 is justified and legal? If not, to what relief is the concerned workman entitled?”

On receipt of the Order No. L-20012/125/2007-IR (CM-I) dt.07.01.2008 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 07 of 2008 was registered on 15.01.2008 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own Ld. Representative & Counsel appeared respectively, and contested the case.

2. This is a case of dismissal on long absentism of the workman named Arjun Bhuia a M/Loader at Borragarh Colliery of M/s BCCL .Though no adverse reports is reported against him except this one Prolonged absent of duty citing illness or others is nothing new in the colliery due to hazardous and tedious nature of work, workman has to perform . The Management imposed the penalty of dismissal from service is not in proportionate to the misconduct the workman committed and needs a natural justice as the workman was robbed of his bread and butter for which his survival in stake. So in the interest of the natural justice, it is being felt that the workman be given one more chance to reform and mend his way. The workman be taken as a fresh employee in the lowest Grade

but without back wages whatsoever, and he be kept under probation strictly for at least two years.

R. K. SARAN, Presiding Officer

नई दिल्ली, 4 जनवरी, 2016

का.आ. 71.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 18/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/01/2016 को प्राप्त हुआ था।

[सं. एल-20012/419/1996-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 4th January, 2016

S.O. 71.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad (Ref. No. 18/1998) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 04/01/2016.

[No. L-20012/419/1996-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT :

Shri R.K.Saran, Presiding Officer

In the matter of an Industrial Dispute under Section
10(1) (d) of the I.D. Act, 1947

REFERENCE NO. 18 OF 1998

PARTIES : The Secretary,
Bihar Colliery Kamgar Union,
Jharnapara, Hirapur, Dhanbad

Vs.

The Addl. Chief Engineer, (E & M)
Dugda Colliery of M/s BCCL,
P.O.Dugda, Distt: Bokaro

Order No. L-20012/419/96-IR(Coal-I)
dt.18.03.1998

APPEARANCES :

On behalf of the workman/Union : None

On behalf of the Management : Mr.D.K.Verma,
Ld. Advocate

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 30th November, 2015

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/419/96-IR (Coal-I) dt.18.03.1998.

SCHEDULE

Whether the action of the Management of Dugda Coal Washery of M/s BCCL in denying regularization of the services of S/Sh.Jay Lal Mahato & 19 others (as per list) is justified? If not, to what reliefs are the concerned workmen entitled ?

2. Neither Union Representative nor the workmen made appearance on the date of hearing, against which the Management Representative Mr.D.K.Verma turned up, not for this time but all along. Nor did let the Tribunal resume much awaited pending argument to push it to final adjudication by appearing on their part on the date. The status of the case revolves around the hearing of the argument since 19th August, 2014 and crawling since then despite providing sufficient opportunity. The workmen sole demand is regularization into service.

From perusal of the case record, it appears that despite three Regd. Notices which were issued to the Secretary of the Union concerned on its address turned unresponsive, speaks of conduct of the workmen as well their Union to go ahead through trails. It appears that the conduct of Sponsoring Union/workmen do not now firm stand for the same cause, they had actually started with. On a nut shell, the Tribunal held sufficient reasonable grounds not to post date after date, but winding up the case. It seems that the case has either been resolved or sorted out as the Union Representative as well as the workmen by their conduct/gesture showed quite unwillingness to contest the case on merits for its finality.

Under these circumstances, it seems the Industrial Dispute does no longer exist. Hence, the case is almost on the stage of winding up as 'No Industrial Dispute'. Accordingly, it is passed an Order of 'No Dispute Award'.

R. K. SARAN, Presiding Officer

Name of the workmen

Sl.No. Name

1. S/Sh Niranjana Mahato
2. Dhiren Mahato
3. Dhaneswar Mahato
4. Gangu Mahato
5. Panchanan Mahato
6. Thakur Pd.Mahato
7. Pushu Manjhi
8. Lalan Tudu
9. Ramesh Pd.Mahato
10. Narayan Mahato
11. Dudh Nath Pd.
12. Birendra Mahato
13. Md.Firoz Khan
14. Dhanswar Singh
15. Ram vilas Ravidas
16. Bikram Yadav
17. Dhaeswar Soren
18. Teklal Mahato
19. Raju Das
20. Jailal Mahto

नई दिल्ली, 4 जनवरी, 2016

का.आ. 72.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 141/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/01/2016 को प्राप्त हुआ था।

[सं. एल-20012/115/2001-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 4th January, 2016

S.O. 72.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad (Ref. No. 141/2001) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 04/01/2016.

[No. L-20012/115/2001-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD****PRESENT :**

Shri R.K.Saran, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947

REFERENCE NO. 141 OF 2001

PARTIES : The General Secretary,
Jharkhand Janta Mazdoor Sangh,
Near Qr.No. IA-373, Koyla Nagar,
Dhanbad

Vs.

The Chief General Manager,
Sijua Area of M/s BCCL,
PO: Sijua, Dhanbad

Order No. L-20012/115/2001 (C-I)
dt.30.04.2001

APPEARANCES :

On behalf of the workman/Union : None

On behalf of the Management : None

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 27th November, 2015

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/115/2001 (C-I) dt.30.04.2001.

SCHEDULE

“Whether the demand of the Union to regularize Sri Prahlaad Singh, Head Chainman to the post of the Asstt. Loading Supervisor in Tech. & Sub Group B with retrospective effect and consequential benefits is just and proper? If so, to what reliefs are the workmen concerned entitled and from what date?”

2. None is reported present on date from the Sponsoring Union/workman. The Management side Ld. Advocate Mr. D.K.Verma registered his presence. Though the three Regd. Notices dt. 9.10.07, 15.11.07 and 24.07.2014 were sent at the address of the Sponsoring Union but to no avail. The status of the case is hanging around for evidence of the Management. From the record it transpires that the Management too failed to get the evidence of the Management completed riding on adjournment plea.

While going through the case record, it is apparently clear that the Sponsoring Union is least concerned

whatsoever to get it to final adjudication. So in the interest of natural justice, the case needs immediate winding up. Hence the case is disposed of a 'No Industrial Dispute'. Accordingly an Award of 'No Dispute' is passed.

R. K.SARAN, Presiding Officer

नई दिल्ली, 5 जनवरी, 2016

का.आ. 73.—राष्ट्रपति, श्री चिंतामणि तिवारी को दिनांक 16.12.2015 (अपराह्न) से केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, नागपुर के पीठासीन अधिकारी के रूप में नियुक्त करते हैं। वे 65 वर्ष की आयु अर्थात् 02.05.2020 तक अथवा अगले आदेशों तक, इनमें से जो भी पहले हो, पद पर रहेंगे।

[सं. ए-19011/05/2015-सीएलएस-II]

अरुणजय कुमार, अवर सचिव

New Delhi, the 5th January, 2016

S.O. 73.—The President is pleased to appoint Shri Chintamani Tiwari as Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur with effect from 16.12.2015 (Afternoon) till he attains the age of 65 years i.e. up to 02.05.2020 or until further orders, whichever is earlier.

[No.A-19011/05/2015-CLS-II]

ARUNJAY KUMAR, Under Secy.

नई दिल्ली, 6 जनवरी, 2016

का.आ. 74.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईएनएस राजाली नेवेल एयर स्टेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 60/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/01/2016 को प्राप्त हुआ था।

[सं. एल-14012/07/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 6th January, 2016

S.O. 74.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 60/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the INS Rajali, Naval Air Station and their workman, which was received by the Central Government on 05/01/2016.

[No.L-14012/07/2015-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, 31st December, 2015

Present :

K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 60/2015

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of INS Rajali, Naval Air Station, Arakkonam and their workman]

BETWEEN:

Smt. M. Chokhubai : 1st Party/Petitioner

AND

The Commandant : 2nd Party/Respondent
INS Rajali, Naval Air Station
Camp Post, Akash Ganga
Arakkonam-631006

Appearance:

For the 1st Party/ : M/s V. Ajoy Khose, Advocates
Petitioner

For the 2nd Party/ : Set Ex-parte
Management

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-14012/07/2015-IR (DU) dated 11.05.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the management of INS Rajali, Arakkonam regarding termination of the service of the petitioner Smt. M. Chokhubai is justified or not? If not, to what relief the workman is entitled?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 60/2015 and issued notices to both sides. On receipt of notice both sides have entered appearance through their counsel and the petitioner has filed claim statement. Though the matter was posted for counter statement by the Respondent repeatedly, the Respondent and counsel had remained absent. Ultimately, the Respondent was called absent and was set ex-parte.

3. The averments in the Claim Statement filed by the petitioner are as below:

The Officers of INS Rajali formed a committee, approved by the Respondent to appoint casual workers

such as sweepers, security guards, etc. The petitioner was appointed as sweeper through NAVAL Akashganga Committee from July 1992 and had worked till 02.11.2007. The petitioner and her co-workers were allocated duty to cut grass, sweep, clean, etc. in the school playground, swimming pool, gym and children's park, etc. by the Management Staff. She was also allocated work as Messenger. She had put in continuous service of 15 years. The last wages paid to her was Rs. 1,300/- per month. The petitioner represented before the Management for a rise in the pay. Rather than listening to the petitioner and considering her request, the representatives of the Respondent abused her and treated her in an unjust and unfair manner. The petitioner was terminated from service on 02.11.2007 orally. The work of the petitioner was permanent, perennial, continuous and regular in nature. The termination of the petitioner is in violation of Section-25F and Section-25H of the Industrial Disputes Act. The petitioner is entitled to be reinstated in service. An order may be passed directing the Respondent to reinstate the petitioner with continuity of service, backwages and all other attendant benefits and also to absorb her as permanent/regular worker in the rolls of INS Rajali Naval Air Station and to extend all benefits as applicable to regular Group "D" Staff.

4. The petitioner has filed Proof Affidavit and marked Ext.W1 to Ext.W8 to substantiate her case.

5. The points for consideration are :

- (i) Whether the termination of the service of the petitioner by the Respondent is justified?
- (ii) What if any is the relief to which the petitioner is entitled?

The Points

6. In the Claim Statement the petitioner has claimed the relief of reinstatement as well as absorption as regular worker in the rolls of the Respondent. However, the schedule of reference is only regarding the termination of service of the petitioner and not for absorption in the regular service of the Respondent. So the claim for absorption need not be considered.

7. In the Proof Affidavit the petitioner has reiterated her claim in the Claim Statement. She has stated in her Proof Affidavit that she had been engaged as a Sweeper by a Committee of the Respondent in July 1992 and she had continued to work with the Respondent in this position till 02.11.2007 on which date she was terminated from service. According to her she was not getting any benefits other than the festival bonus of Rs. 500/- paid once in a year, apart from the wages. The last wages she has drawn is said to be @ Rs. 1,300/- per month. According to the petitioner she had demanded a hike in the wages and she was terminated from service on account of this.

8. Ext.W1 and Ext.W2 are sufficient to show that the petitioner was working for the Respondent. Ext.W1 includes several temporary passes issued to the petitioner by the Naval Air Station. Ext.W2 includes payment vouchers for the period from June 1992. The petitioner is seen paid Rs. 350/- for the month of June 1992. A perusal of Ext.W2 reveals monthly payment to the petitioner with periodical increase in the amount paid. Payment is seen made until 2003 as per Ext.W2. In March 2003 the petitioner has received Rs. 1,125/- as wages. Though the petitioner has stated that she had worked with the Respondent until 2007 vouchers for the period subsequent to 2003 are not seen produced. However, Ext.W6 the Counter Statement filed by the Respondent before the Assistant Labour Commissioner would show that the petitioner was working with the Respondent, though the claim in the said Counter Statement is that there was no employer-employee relationship between the petitioner and the Respondent and that the petitioner and others were paid from the contribution of the married sailors.

9. The Respondent has not come forward to prove that there was no employer-employee relationship between it and the petitioner. On the other hand the payment vouchers would show that they are signed by the Officers of the Respondent. Bonus also is seen paid to the workers including the petitioner. There are also the temporary pass issued to the petitioner by the Naval Air Station. All these are sufficient to show that the petitioner was working with the Respondent as a casual labour and she was continuously working from the year 1992 to 2007.

10. It is clear from the evidence of the petitioner that she was disengaged by the Respondent consequent to her demand for raise in the wages. There was no compliance with Section-25F of the ID Act when she was terminated from service.

11. There is latches on the part of the petitioner in raising the dispute. Though she was terminated in the year 2007 itself she has raised the dispute only in 2013. She has not given any explanation for the delay. Though the petitioner is entitled to be reinstated in service or compensated, she is not entitled to any backwages as claimed by her even on account of the delay in raising the dispute.

12. The Respondent is either to reinstate the petitioner in service or pay her compensation. The compensation payable is fixed as Rs. 2,00,000/-

13. Accordingly, the Respondent is directed to reinstate the petitioner in service or pay her Rs. 2,00,000/- as compensation as alternative within one month of publication of the award. In default of payment of amount in time, the Respondent is liable to pay interest @ 7.5% per annum on the amount payable from the date of the award. The reference is answered accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : Proof Affidavit filed by the petitioner

For the 2nd Party/Management : —

Documents Marked :**On the petitioner's side**

Ex.No.	Date	Description
Ext.W1	-	Temporary passes issued by the 2nd Party to the 1st Party
Ext.W2	-	Payment vouchers receipts for the period from 01.06.1992 to 2003
Ext.W3	27.08.1998	Proposal for increase in the monthly wages to the Casual employees including the 1st Party
Ext.W4	-	Representation made by the petitioner to the Hon'ble President of India
Ext.W5	-	Petition filed by the 1st Party before the Conciliation Officer, Chennai
Ext.W6	26.03.2014	Counter filed before the Conciliation by the 2nd Party
Ext.W7	24.09.2014	Failure Report
Ext.W8	11.05.2015	Order of reference

On the Management's side

Ex.No.	Date	Description
	N/A	

नई दिल्ली, 6 जनवरी, 2016

का.आ. 75.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बंगाल इंजीनियर्स ग्रुप एण्ड सेंटर रूकी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 38/2003 एवं 70/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/01/2016 को प्राप्त हुआ था।

[सं. एल-14012/67/2002-आईआर (डीयू),
सं. एल-14012/67/2002-आईआर (डीयू)(ए)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 6th January, 2016

S.O. 75.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 38/2003

& 70/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bengal Engineers Group & Centre Roorki and their workmen, which was received by the Central Government on 06/01/2016.

[No. L-14012/67/2002-IR (DU),
No. L-14012/67/2002-IR (DU)(A)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW****PRESENT:**

RAKESH KUMAR, Presiding Officer

I.D. No. 38/2003

Ref.No. L-14012/67/2002-IR(DU) dated 05.03.2003

BETWEEN

Sri Ghasita Ram & Others C/o Sh. Ghasita Ram
Vill. Mohanpur, Post. Milapnagar Dhandera,
Roorkee, Hardwar
Uttanchal-247066

AND

The Commandant/Administrative Officer,
Bengal Engineers Group & Centre Roorki,
Hardwar, Uttanchal

AWARD

1. By order No. L-14012/67/2002-IR(DU) dated 05.03.2003 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Ghasita Ram & Others, Hardwar(Uttanchal) and the Commandant/Administrative Officer, Bengal Engineers, Roorki, Hardwar, Uttanchal for adjudication.

2. The reference under adjudication is:

“WHETHER THE ACTION OF BENGAL ENGINEER GROUP CENTRE ROORKEE IN NOT GIVING THE CIVIL PERMANENT EMPLOYEE STATUS TO SH. GHASITA RAM, ZAKIR HUSSAIN, RAMESHWAR PRASAD, KARFULAR REHMAN, MADAN SINGH, NASEEM AHMED, HUKAM SINGH, HABIB, SURENDER KUMAR, FAIR AND LEGAL? IF NOT FOR WHAT RELIEF THEY ARE ENTITLED?”

3. As per the claim statement, in brief, facts of the case are such as that the workmen were appointed to look after the work of garden, flowers, plants etc. and further to look

after the work of bakery also. The works undertaken at the unit have been mentioned in the claim statement A1-4. It has been further asserted that, since the initial appointment, all the temporary workmen have been doing their duties according to the work assigned to them, but EL, ML and other leave allowance facilities have not been provided to them, they were not given any leave except national holidays and if they proceeded on leave their salary was deducted. It has also been emphasized that junior workmen have been regularized on the permanent post whimsically without any procedure or rules. The workmen have alleged that the management had adopted unfair labour practice as well violation of I.D. Act. The management has refused to settle the matter amicably; the matter was referred to Hon'ble CAT, New Delhi. Standing orders given by the Labour Department have not been followed by the management. The workmen have alleged that they have worked for more than 240 days in every year and their work have been outstanding without any complaint even then they have not been regularized. The applicants have prayed for their regularization and to provide benefits of permanent service; along with the cost of the case.

4. The management has filed written statement A-12 wherein allegations of the claim statement have been denied. The company is an integral part of its training activities wherein training for purposes of defence is imparted only to defence personnel, the Group and Centre is imparting and conducting training to defence personnel through two training battalions namely number One Training Battalion, and number Two Training Battalion. The persons mentioned at Sl. No.1, 2, 6, 7, 8, 9 are Regimental Employees discharging duties as Malis and under number One Training Battalion. The company was doing purely a welfare activity and totally dedicated to the welfare of Army Jawans/Troops, the service personnel, the Ex-service personnel and their families, the BEG is also on a minuscule basis carrying on a Bakery, called the Sappers Bakery. The produce/product of the Bakery are not sold/open to sale in the open market or for the public at large. The matter of fact is that the bakery items are for the use and consumption of Army Troops, service personnel, Ex-personnel and their families only and the bakery is functioning on no profit and no loss basis items are given on concessional rates. Persons mentioned are regimental employees discharging duties in Bakery.

5. The number one training battalion and sappers bakery are situated in the BEG premises only, Cantonment area, Roorkee. The number one training battalion and sappers bakery are not independent, separate, alienable or severable from Bengal Engineers Group and Centre but are part and parcel of the Centre. The activities of the training battalion cannot be distinguished or separated from those of the group and centre. Since the mass and pre-dominant activity of the Group and Centre are

sovereign in nature, hence it is not an industry, as it is not engaged in any business, trade, undertaking or any manufacture of the like. Since the opposite party is not an industry, therefore, the provisions of Industrial Disputes Act, 1947 are not at all maintainable against the opposite party. Hence the reference order under Section 10 of the I.D. Act, 1947 is legally not maintainable or sustainable. Further, in case the applicants allege that the opposite party is an industry, then the burden to prove the same is on the applicants themselves. It is correct that the opposite party is named as Bengal Engineer Group and Centre. But it is incorrect that the opposite party is an industry or can be termed as employer under/for the purposes of I.D. Act. 1947.

6. The opposite party has further stated that it is totally incorrect that the opposite party is engaged in any business or commercial or business activity. It is totally incorrect that the opposite party as an economic or business venture is engaged in preparation of Bakery items or production and sale of ornamental plants. The growing of plants to be used in the official and other premises of the BEG, cannot be termed as production. No sales of any kind are done of the plants but they are used only for decoration purposes. No industrial dispute as alleged either exists or is apprehended between the parties. In fact the question of any industrial dispute does not arise because the opposite party is not an industry. The applicants are not workmen. The so-called grievances in respect of which alleged application has been moved do not partake the nature of industrial dispute and no relief what soever can be claimed under the I.D. Act, 1947. Claiming wages as per minimum wages, annual increment, bonus, D.A., overtime, leave with wages, weekly off, LTA, washing allowance, fitness allowance, ESI etc. cannot be claimed under the I.D. Act., and under the present adjudication proceedings. Further the alleged application of the applicants on the basis of which the reference order has been made and also the applicants statement of claim, are also not maintainable because in respect of the alleged dispute, the application has not been espoused by the union of workmen. Similarly the alleged claim in respect of regularization and for receiving benefits at par with civil permanent employees, is further not at all maintainable.

7. The management has further stated that the opposite party is not industry, provision of I.D. Act., are not applicable, the dispute has been raised without any basis. The management has stated that applicants were never appointed against notified or sanctioned post, the workmen has taken false and baseless ground in the claim statement, the workmen have raised the issue simultaneously before different forums. CAT, New Delhi had also declined to give any relief to the workmen. The relief sought is beyond the jurisdiction of this Tribunal, the workmen cannot claim parity with civilian permanent employee in absence of any scheme of regularization, as well as keeping in account and in absence of non-availability

of fund and non-availability of permanent sanctioned post and other basic requirement. Opposite Party has requested to reject the claim

8. Rejoinder A-20 has been filed by the workmen wherein pleading of the written statement has been denied, while reiterating the grounds taken in the claim statement.

9. The claimant filed document along with list C-13. The opposite party has filed documents as per A-17. Additional list of documents A-24 has also been filed by the management. The management witness Lt.Col. Raghunath Swain was cross-examined by the management. The parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral submissions.

10. Heard learned authorized representatives of the parties at length and perused documents available on record in light thereto.

11. The authorized representative of the workmen has submitted that the workmen have been working with the opposite party for the last many years; but the management did not regularize their services. It is also the case of the workmen that the work they have been engaged in was perennial in nature and runs throughout the year, therefore, there is availability of the work round the year even then the management of the Bengal Engineer Group & Centre continued to avail their services as Mali as well as in their Bakery; but deprived them of their legitimate right of regularization. He has relied upon:

- (i) The Bangalore Water Supply & Sewerage Board vs A. Rajappa & others 1978 (36) FLR 266.
- (ii) Union of India vs Rajendra Kumar & others 2004 (103) FLR 307.
- (iii) General Manager, Telecom vs S. Srinivasa Rao & others 1 (1998) SLT 9.
- (iv) State of U.P. vs Presiding Officer, Labour Court & another 2003 (1) ELC 27 (Utt).
- (v) Chief Conservator of Forest & another vs Jagannath Maruti Kondhare 1996 (1) SLR 56.
- (vi) State of MP through Conservator of Forest & others vs Ram Prakash Tiwari & another 2003 LLR 9.
- (vii) Divisional Forest Officer Sirsa vs Jagdish 2004 (2) SLR 722.
- (viii) State of Haryana vs Ram Avtar & another 2005 (5) SLR 479.
- (ix) State of UP & another vs Labour Court, Varanasi & another 2005 (106) FLR 506.

12. In rebuttal, the authorized representative of the management has argued that the opposite party is indulge in discharging sovereign function and does not come

within the definition of 'industry' as provided in the Section 2 'j' of the Act. He has further submitted that the since the opposite party management is not an industry, therefore, provisions of I.D. Act or their violation does not attract in their case. The authorized representative of the management has submitted that the applicants were Regimental employees whose engagement was need based and necessitated to exigencies of work, therefore, cannot claim the status of civilian permanent employees in the absence of a scheme of regularization etc. It has relied on

- (i) Secretary, State of Karnataka & others vs Umadevi (3) & others (2006) 4 SCC 1.
- (ii) Dhampur Sugar Mills Ltd. vs Bhola Singh. 2005 LAB. I.C. 1611.
- (iii) Damodar Valley Corporation vs. The State of Bihar & others 2005 LAB IC 2774.

13. Having gone through the rival contentions of the learned authorized representatives of the parties, it comes out that that the case of the opposite party management i.e. Bengal Engineers Group rests on two points; firstly that it is not an industry under definition of 'industry' provided in the section 2 'j' of the Act; and secondly, that the workmen have been engaged on casual basis as per requirement and were in capacity of Regimental employees/ casual workers and are not engaged against any permanent or sanctioned post; and also that the terms and conditions of engagement of regimental employees are governed by the respective appointment letters and terms and conditions of service of regimental employees.

14. Now entering into the merits of the case, the management of the Bengal Engineer Group has taken the preliminary plea/objection that the present industrial dispute is not maintainable for the reasons that the management of Bengal Engineers Group & Centre, Roorkee is not an 'industry' as provided in Section 2 'j' of the Act. It has vehemently contended that being an integral part of the Indian Army, wherein training is imparted to engineering/defence personnel exclusively of Indian Army, therefore, it is engaged in sovereign function of the state; and is not engaged in any industrial activity or commercial venture. He has also submitted that the management of Bengal Engineer Group carries on a minuscule basis a Bakery viz. Sappers Bakery, purely as a welfare activity on 'no profit and no loss' basis.

Per contra, the authorized representative of the applicants has submitted that the Sappers Bakery is part and parcel of the Bengal Engineer Group and 'no profit and no loss' basis cannot exclude it from the purview of 'industry'. He has relied on Union of India vs Rajendra Kumar & others 2004 (103) FLR 307 and Bangalore Water Supply case.

15. Having close regard to the rival pleadings of the parties it becomes apparent that before entering into the

merit of the case this Tribunal has to decide as to whether the opposite party is an 'industry' or not within the meaning of the Section 2 (j) of the Act. In this regard the workman has relied on Union of India vs Rajendra Kumar & others 2004 (103) FLR 307; wherein Hon'ble Uttranchal High Court observed that the Kumaon Regiment Centre, Wool and Shawl Factory, Ranikhet is an industry and not a sovereign State. However, the verdict of Hon'ble Apex Court in Bangalore Water Supply & Sewerage Board etc. vs. A Rajappa & others case; is worthwhile for drawing some conclusion as to whether the opposite party management of Bengal Engineer Group which runs Sappers Baker is an 'industry' or not. Hon'ble Apex Court in Bangalore Water Supply case has observed that:

"absence of profit motive on gainful objective is irrelevant, be the venture in the public, joint, private or other sector."

Hon'ble Apex Court has further observed that

"Where (i) systematic activity (ii) organized by co-operation between employer and employee (the direct and substantial element is commercial (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an industry in that enterprise."

In the instant case the opposite party management has come with specific pleading that Bengal Engineers Group and Centre is a training Centre of Engineering personnel in Indian Army; wherein training for the purpose of defence, is imparted only to defence personnel. It has further pleaded that the Bengal Engineers Group and Centre also on a minuscule basis carries on a Bakery viz. Sappers Bakery, purely as a welfare activity and totally dedicated to the welfare of the Army Jawan's/Troops, the service personnel, the Ex-service personnel and their families. It is their case that the produce of the Bakery is not sold in the open market or to the public at large; however they are consumed by the Army Troops, service personnel and their families and the bakery is functioning on no profit no loss basis; moreover the items are given on concessional rates.

The management of the Bengal Engineers Group and Centre its pleadings has termed the workmen under present industrial dispute as Regimental employee/casual workers and has filed 'Terms and conditions of Services' of such employees, paper No. 17/16 to 17/23. The relevant part is quoted hereunder:

"General

1. Bengal Engineers Group and Centre, Roorkee has est certain Regtl ventures for welfare of all rks, Ex-

servicemen, widows and also to provide various facilities, services and items at reasonable rates.

2. These ventures are essentially manned by Bengal Spr XSM and their widows. In case suitable Bengal Spr ZSM/Widows are not available for a particular job, other pers can be employed with sanction of Commdt. Regtl employees will be selected by a board of offrs detailed on as reqd basis after issue of advertisement/notice by the Adm offr BEG."

A bare reading of above terms goes to show that apart from imparting training to the defence personnel the management of the Bengal Engineers Group and Centre was engaged in other welfare activities also for its defence personnel as well as for war widows etc.; and for this the Bengal Engineers Group and Centre kept on recruiting the persons from outside when suitable personnel from the Regiment and war widows were not available.

But having regard to the pleading of the management itself and law pronounced by Hon'ble Apex Court in Bangalore Water Supply case, the nature of work carried out by the Bengal Engineers Group & Centre, particularly through Sappers Bakery, which is part and parcel of the Bengal Engineers Group & Centre, qualifies the triple test, formulated by Hon'ble Apex Court in Bangalore Water Supply case. As there is goes on systematic activity with due co-operation of the opposite party and the employees engaged/appointed by them for production of bakery product for consumption of defence personnel and their families as welfare measure. Moreover, selling of bakery products to the ex and serving Army personnel and their families, though on concessional rates or no profit and no loss basis, brings it in the purview of commercialized activity, which is being run for the purpose of satisfaction of human want, though for a selected class of people.

Thus, in view of facts and circumstances of the case and above legal prepositions, I am of the considered opinion that the Bengal Engineers Group & Centre which runs Sappers Bakery is squarely covered within the definition of 'industry' within the provisions of Section 2 (j) of the Industrial Disputes Act, 1947 so far as running/ administration of welfare activities is concerned through Sappers Bakery.

16. The workmen have given details of their appointment date etc. in the Schedule-1 annexed to their statement of claim; wherein it has been mentioned that the workman Gasita Ram had been appointed on 01.07.76, Zakir Hussain on December, 1984, Rameshwar Prasad on July, 1975, Kafilur-rehman on June, 1965, Madan Singh on 01.08.98, Nasim Ahmad on 12.11.97, Hukum Singh on November, 1979, Habib on 01.01.76 and Surendera Kumar on 29.11.80. The date of appointment of other 11 workmen is also there in Schedule-II; but their names does not finds their reference in the Schedule of reference, referred to this Tribunal for adjudication. The workmen have pleaded that they have

been engaged in perennial nature of work and are being paid less wages and in spite of being engaged for long time, they are not being regularized by the management of Bengal Engineers Group & Centre. The workmen have filed a voluminous list of documents, C-13 in support of their claim.

In the mean time, during pendency of the present industrial dispute, the workman approached this Tribunal with an application under Section 33 A of the Act, for alleged violation of provisions contained in Section 33 of the Act, alleging therein that being annoyed from their present industrial dispute, the management of the Bengal Engineers Group & Centre has terminated their services w.e.f. 01.08.2003. The complaint of the workmen was registered as industrial dispute no. 38/2003, which is being decided simultaneously observing violation of provisions of Section 33 & 25 F of the Industrial Disputes Act, 1947; and the workman have been awarded reinstatement with consequential benefits, including continuity in service and full back wages.

The workmen in their oral evidence have stated that they have been engaged by the opposite party for years and are doing perennial nature of work and their services have been terminated w.e.f. 01.08.2003 without any notice or notice pay etc.. Also, the management witness, Lt. Col. Raghunath Swain, stated that the workmen used to help Mali and Sappers Bakery was a welfare venture and the workmen were not paid any compensation etc. which terminating their services. He also stated that Regimental employees are kept as and when required. The management also filed an additional list of documents, A2-21 to 21/5, which bears general guidelines/procedural formalities to be followed for filling up of group 'C' & 'D' vacancies through direct recruitment; and it also bears copy of instructions regarding filling up of Group 'D' posts by regularization of casual labourers, paper No. 21/5. The relevant portion of above instructions is given hereunder:

“(i) Two out of every three vacancies in Group 'D' posts are to be utilized for regularization of casual labourers having temporary status as per their seniority and one vacancy is to be filled by direct recruitment. If no such person is available, all posts are to be filled by direct recruitment.

(ii) As clarified by DOP&T, “Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Govt of India, 1993” was a onetime affair and is applicable in respect of only those casual employees who were in service on the date of notification of the scheme. i.e. 10 Sep 1993 and have rendered one year of continuous service with 240 or 206 days, as the case may be, on 10 Sep 1993 and also those employed as casual labourers subsequently.

(iii) The casual labourer with temporary status being considered for regularization must fulfill the eligibility

conditions of the post as given in its recruitment rules. They would be allowed age relaxation equivalent to the period for which they have worked continuously as casual labourer.”

The authorized representative of the workman has contended that the management of the Bengal Engineers Group & Centre has not complied with above guidelines of the DOPT. However, the authorized representative of the management relying on Umadevi's case has contended that the workmen do not confer any right for regularization. In this regard a clear distinction is made that in Umadevi case, Hon'ble Apex Court has put a bar to regularize the services of those casual labourers whose appointment/engagement is against the Recruitment Rules etc.; but it never put any constraint to the right of the State to regularize the services of casual labourer through some Scheme. The above Scheme of the DOPT was formulated by the Central Government prior to the pronouncement of Hon'ble Apex Court in Umadevi's case, therefore, the same is not applicable to the case which fall within the purview of the Scheme notified by the DOPT vide dated 10 Sep, 1993.

17. It is the case of the workmen that they have been working since long and have completed more than 240 days working in each calendar year; also, the management has admitted that they have been working with them; but it has not come forward with the working day's details to negate the claim of the workman. Hon'ble Gujarat High Court in Director, Fisheries Terminal Division vs. Bhakubhai Meghajibhai Chavda 2010 AIR SCW 542; has observed that for proving 240 days' continuous working, the workman would have difficulty in having access to all official documents, muster rolls etc., in connection with his service, therefore, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service. Also, Hon'ble Apex Court in Umadevi's case has observed as under:

“There may be cases where irregular appointments (not illegal appointments) of duly qualified persons in duly sanctioned vacant posts might have been made and employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the series of such employees may have to be considered on merits in the light of the principles settled by the Supreme Court in the cases affirmed in this judgment and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals.”

18. Hence, in view of the facts and circumstances of the case, law cited and discussions made hereinabove, it is established that all the workman whose names finds reference in the schedule of reference were engaged as Regimental Employees/Casual labourers to perform perennial nature of work and accordingly, were entitled to be given benefits of the regularization scheme(s) formulated by the management from time to time as well as provisions provided for regularization under Rules. However, the management has not filed any working details of the workmen to scrutinize the matter aptly. Thus, in the backdrop of the case and non-availability of working details of the workmen, I am of considered opinion that the workmen who were working on the date of notification of DOPT vide dated 10.09.1993 and fulfilled other requirements were required to be regularized in terms of scheme dated 10.09.1993; and as regard other workmen who were not in services on the date of above notification of DOPT or did not full the requirement on the cutoff date, are liable for consideration for regularization in view of pronouncement of Hon'ble Apex Court in Umadevi's case and instructions regarding filling up of Group 'D' posts by regularization of casual labourers; wherein it has been provided that two out of every three vacancies in Group 'D' posts are to be utilized for regularization of casual labourers. The management of the Bengal Engineer Group & Centre is directed to take appropriate action in this regard as per law; and communicate its decision through speaking order within 8 week's time from publication of this award. The reference is adjudicated accordingly.

19. Award as above.

LUCKNOW

23rd December, 2015

RAKESH KUAMR, Presiding Officer

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, LUCKNOW**

PRESENT:

RAKESH KUMAR, Presiding Officer

I.D. No. 70/2004

(Filed application u/s 33A of the I.D. Act)

BETWEEN:

Sri Ghasita Ram & Others
M/s. Bengal Engineers & Group Centre
Distt. Roorkee, Uttranchal

AND

M/s. Bengal Engineers Group & Centre
Roorkee, Distt: Haridwar
Uttranchal

AWARD

1. Ghasita Ram and Others have filed petition under section 33A of the I.D. Act. Before this Tribunal in brief the workmen have stated that earlier the case referred by Govt. of India to This Tribunal registered as I.D.38/03 is also pending. During the pendency of that case, it is alleged that on 1/8.2003 opposite party without assigning any reason and without any valid process removed them from services, more over they did not pay compensation as well. The workmen have stated that during the pendency of another case without prior permission of the court and without any genuine reason removal from service by opposite party is misappropriate and illegal as well. The workmen have prayed for their reinstatement with full back wages.

2. The management has filed written statement/objection A-4 wherein it has been stated that the opposite party is engaged in welfare activity and dedicated to the welfare and transfers of troop. The BEG is also a unit carrying on Bakery etc, product of bakery are not sold at open market at large.

3. The management further stated that number one training battalion and sappers bakery are situated in the BEG premises only, Cantonment area, Roorkee. The number one training battalion and sappers bakery are not independent, separate, alienable or severable from Bengal Engineers Group and Centre but are part and parcel of the Centre. The activities of the training battalion cannot be distinguished or separated from those of the Group and Centre are sovereign in nature, hence it is not an industry, as it is not engaged in any business, trade undertaking or any manufacture of the like. Since the opposite party is not an industry therefore the provision of ID Act. 1947 are not at all applicable/maintainable against the opposite party. Hence the complaint of applicants under section 33A of the I.D Act, 1947 is legally not maintainable or sustainable in case the applicants allege that the opposite party is an industry then the burden to prove is on the applicants themselves.

4. The opposite party is not engaged in any business or any commercial or business activity. The opposite party is not engaged in preparation of Bakery items or production and sale of ornamental plants as an economic or business venture or enterprise. The growing of plants to be used in the office and other premises of BEG are not sold and are used for only decoration purposes. No industrial Dispute either arose or exists between the parties. The opposite party is not an industry and the applicants are not workmen. The alleged application dated 19.06.2004 moved by the applicants under section 33A is totally misconceived and not legally maintainable for the following reasons (without prejudice to one and another):

- (a) the complaint is vague as it fails to specify whether violation/contravention alleged is of sec. 33 (i) or sec. 33 (2)

(b) The applicant allege their removal from service (on account of retrenchment) with effect from 01.08.2003; whereas the complaint application is dated 19.6.2004. Hence the same has been moved after nearly a year. Therefore the same is unduly belated and on account of delay and latches merits it deserves outright rejection and dismissal.

(c) The alleged complaint filed under section 33A is for contravention of the provisions of section 33 of the I.D. Act, 1947. But the opposite party has not contravened the provisions of section 33 of I.D. Act for the following reasons:-

- (i) the opposite party is Not Employer under the Act and not amenable to provisions there of
- (ii) The opposite party has not altered the service condition/conditions of service of the applicants.
- (iii) The opposite party has not discharged or not punished whether by dismissal or otherwise for any misconduct of the applicant.
- (iv) No industrial dispute either exists or is pending between the party.
- (v) Neither the provisions of section 33A nor of section 33 are/were either attracted, applicable or contravened in the matter.

(d) Without Prejudice to the foregoing:

Since the opposite party is not an industry hence provision of Industrial Disputes Act. 1947 are not attracted or applicable. Equally the provisions of section 3 are neither attracted or applicable and question of contravention of section 33 does not arise at all.

(e) Without prejudice to the foregoing:

The applicants are alleging contravention on account of their removal from service as retrenchment without payment of any retrenchment compensation. Assuming but without admitting (just for the sake of argument) that provisions of Industrial Disputes Act, 1947 are applicable, even then the case of applicant is not covered under section 33 and will not attract provisions thereof because the applicants had not been discharged or punished whether by dismissal or otherwise for any misconduct. Assuming, just for the sake of arguments that they were retrenched then also provisions of section 33 are/wee not attracted/contravened.

5. The management has further stated that no provision of I.D. Act was violated by the management. The present case is not covered under section 33 of I.D. Act, the applicants have never been discharged or punishment of any misconduct. The management has emphasized that the engagement of the applicant was necessary due to exigency of work, for not requirement they were discontinued from 1.8.03, therefore it cannot be termed as retrenchment. The management asserted that the prayer of the applicant is illegal misconceived and without any merit. The management has requested to dismiss the application of the workman.

6. Later on rejoinder A1-7 has been filed on behalf of the workman with strong denial of the pleas taken in the written statement, while reiterating the facts mentioned in the petition moved under section 33A of the I.D. Act.

7. The workman has filed certain photo copies of the documents and ruling of the Hon'ble High Court as per list C-8. The management has filed certain documents as per list C-10 thereafter certain Rulings of Hon'ble High Court and Hon'ble Supreme Court and CGIT have also been mentioned as per list C-11 by the applicant.

8. The workman, Ghasita Ram, examined himself in support of application and the management examined Lt. Col. L. K. Sharma in support of their defence. The parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral submissions.

9. Heard learned authorized representatives of the parties at length and perused documents available on record in light thereto.

10. The authorized representative of the workmen has submitted that the workmen have been working with the opposite party for the last many years; but the management did not regularize their services. When the management did not heed to their request for regularization, the workmen moved an application/compliant for their regularization before Assistant Labour Commission (Central), which on submission of Failure of Conciliation Report before the Central Government, the same was later referred for adjudication to this Tribunal vide reference No. L-14012/67/2002-IR(DU) dated 05.03.2003. He has submitted that the said reference was registered as industrial dispute No. 38/2003 with this Tribunal and hearings were instituted. It is alleged by the authorized representative of the workman that the management has terminated the services of the workmen without any rhyme or reason or any retrenchment compensation on 01.08.2003, during pendency of said industrial dispute before this Tribunal, in violation to the provisions contained in Section 33 of the Industrial Disputes Act, 1947. The learned representative of the workman has submitted that said illegal action of the mnagment has led to filing of present application under Section 33 A of the Act for violation of provisions contained in Section 33.

11. In rebuttal, the authorized representative of the management has argued that the opposite party is indulge in discharging sovereign function and does not come within the definition of 'industry' as provided in the Section 2 'j' of the Act. It has further submitted that the since the opposite party management is not an industry, therefore, provisions of I.D. Act or their violation does not attract in their case. The authorized representative of the management has submitted that the applicants were Regimental employees whose engagement was need based and necessitated to exigencies of work; and accordingly, were discontinued when not required w.e.f. 01.08.2003.

12. Having gone through the rival contentions of the learned authorized representatives of the parties, it comes out that that the case of the opposite party management i.e. Bengal Engineers Group rests on two points; firstly that it is not an industry under definition of 'industry' provided in the section 2 'j' of the Act; and secondly, that the workmen have been engaged on casual basis as per requirement and were in capacity of Regimental employees; hence their services have been terminated when there was no necessity of their services; hence there stands no violation of any of the provisions of the Act.

13. Now entering into the merits of the case, the management of the Bengal Engineer Group has taken the preliminary plea/objection that the present application under section 33 A is not maintainable for the reasons that the management of Bengal Engineers Group & Centre, Roorkee is not an 'industry' as provided in Section 2 'j' of the Act. He has vehemently contended that being an integral part of the Indian Army, wherein training is imparted to engineering/defence personnel exclusively of Indian Army, therefore, it is engaged in sovereign function of eth state; and s not engaged in any industrial activity or commercial venture. He has also submitted that the management of Bengal Engineer Group carries on a minuscule basis a Bakery viz. Sappers Bakery, purely as a welfare activity on 'no profit and no loss' basis.

Per contra, the authorized representative of the applicants has submitted that the Sappers Bakery is part and parcel of the Bengal Engineer Group and 'no profit and no loss' basis cannot exclude it from the purview of 'industry'. He has relied on Union of India vs Rajendra Kumar & others 2004 (103) FLR 307 and Bangalore Water Supply case.

14. Having close regard to the rival pleadings of the parties it becomes apparent that before entering into the merit of the case this Tribunal has to decide as to whether the opposite party is an 'industry' or not within the meaning of the Section 2 (j) of the Act. In this regard the workman has relied on Union of India vs Rajendra Kumar & others 2004 (103) FLR 307; wherein Hon'ble Utranchal High Court observed that the Kumaon Regiment Centre, Wool and Shawl Factory, Ranikhet is an industry and not

a sovereign State. However, the verdict of Hon'ble Apex Court in Bangalore Water Supply & Sewerage Board etc. vs. A Rajappa & others case; is worthwhile for drawing some conclusion as to whether the opposite party management of Bengal Engineer Group which runs Sappers Baker is an 'industry' or not. Hon'ble Axex Court in Bangalore Water Supply case has observed that:

"absence of profit motive on gainful objective is irrelevant, be the venture in the public, joint, private or other sector."

Hon'ble Apex Court has further observed that

"Where (i) systematic activity (ii) organized by co-operation between employer and employee (the direct and substantial element is commercial (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religions but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an industry in that enterprise."

In the instant case the opposite party management has come with specific pleading that Bengal Engineers Group and Centre is a training Centre of Engineering personnel in Indian Army; wherein training for the purpose of defence, is imparted only to defence personnel. It has further pleaded that the Bengal Engineers Group and Centre also on a minuscule basis carries on a Bakery viz. Sappers Bakery, purely as a welfare activity and totally dedicated to the welfare of the Army Jawan's/Troops, the service personnel, the Ex-service personnel and their families. It is their case that the produce of the Bakery is not sold in the open market or to the public at large; however they are consumed by the Army Troops, service personnel and their families and the bakery is functioning on no profit no loss basis; moreover the items are given on concessional rates.

The management of the Bengal Engineers Group and Centre in its pleadings has termed the workmen under present industrial dispute as Regimental employee/casual workers and has filed 'Terms and conditions of Services' of such employees. The relevant part is quoted hereunder:

"General

1. Bengal Engineers Group and Centre, Roorkee has est certain Regtl ventures for welfare of all rks, Ex-servicemen, widows and also to provide various facilities, services and items at reasonable rates.

2. These ventures are essentially manned by Bengal Spr XSM and their widows. In case suitable Bengal Spr ZSM/Widows are not available for a particular job, other pers can be employed with sanction of Commdt. Regtl employees will be selected by a board of offrs detailed on as reqd basis after issue of advertisement/notice by the Adm offr BEG"

A bare reading of above terms goes to show that apart from imparting training to the defence personnel the management of the Bengal Engineers Group and Centre was engaged in other welfare activities also for its defence personnel as well as for war widows etc.; and for this the Bengal Engineers Group and Centre kept on recruiting the persons from outside when suitable personnel from the Regiment and war widows were not available.

But having regard to the pleading of the management itself and law pronounced by Hon'ble Apex Court in Bangalore Water Supply case, the nature of work carried out by the Bengal Engineers Group & Centre, particularly through Sappers Bakery, which is part and parcel of the Bengal Engineers Group & Centre, qualifies the triple test, formulated by Hon'ble Apex Court in Bangalore Water Supply case. As there goes on systematic activity with due co-operation of the opposite party and the employees engaged/appointed by them for production of bakery product for consumption of defence personnel and their families as welfare measure. Moreover, selling of bakery products to the ex and serving Army personnel and their families, though on concessional rates or no profit and no loss basis, brings it in the purview of commercialized activity, which is being run for the purpose of satisfaction of human want, though for a selected class of people.

Thus, in view of facts and circumstances of the case and above legal prepositions, I am of the considered opinion that the Bengal Engineers Group & Centre which runs Sappers Bakery is squarely covered within the definition of 'industry' within the provisions of Section 2 (j) of the Industrial Disputes Act, 1947 so far as running/administration of welfare activities is concerned through Sappers Bakery.

15. Further, the management of the Bengal Engineers Group & Centre has come up with case that the applicants in the instant industrial dispute were Regimental employees whose engagement was need based and necessitated due to exigencies of work; and accordingly, non requirement of their service led to their termination and this does not involve any alleged violation of the provisions of the I.D. Act including Section 33 as the same are not attracted in the present case; and accordingly, the present industrial dispute, under Section 33 A, for alleged violation of Section 33 is not maintainable.

16. Section 33 A of the Industrial Disputes Act, 1947 provides provision for adjudication a matter for alleged violation of provisions of Section 33 i.e. alteration in the service condition of an employee by the employer during pendency of proceedings before a conciliation officer, Board, an arbitrator, Labour Court, Tribunal or National Tribunal. The Sections 33 & 33 A of the Act are quoted hereunder:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of

proceedings. – (1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

- (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or
- (b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute,

Save with the express permission in writing of the authority before which the proceeding is pending.

33A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceeding. – Where an employer contravenes the provisions of section 33 during the pendency of proceedings before a conciliation officer, Board, an arbitrator, Labour Court, Tribunal or National Tribunal any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner, -

- (a) to such conciliation officer or Board, and the conciliation officer or Board shall take such compliant into account in mediating in, and promoting the settlement of, such industrial dispute; and
- (b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such compliant, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the compliant as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly

A bare reading of above provision makes it crystal clear that where an employer contravenes the provisions of Section 33 i.e. alters the service condition in respect of any workman, which is prejudicial to him, during pendency of any proceedings before a conciliation officer, Board, an arbitrator, Labour Court, Tribunal or National Tribunal then such a workman, aggrieved by such contravention, may make a compliant in writing, to the forum before which the proceedings are pending. There is nothing which debars the individual workman to come forward and lodge the complaint against contravention of Section 33 of the Act nor there any binding that the parties to the proceedings

pending and that making complaint should be the same. Rather it is very specifically given that “any employee aggrieved by such contravention, may make a complaint in writing”. Nowhere in the Section 33 it is provided that if the pending proceeding have been instituted by the Union then the workman whose cause has been espoused in the said proceeding cannot move a compliant independently under Section 33 A for alleged contravention of provisions contained in Section 33 of the Act.

Therefore, in view of the provisions laid down in the Section 33 A of the Industrial Disputes Act, 1947 I am of the considered opinion that the objection of the management regarding non-maintainability of the present complaint is devoid of merit and is liable to be rejected.

17. The workman’s witness stated on oath that he has been working as Mali with the opposite parties and his services were terminated w.e.f. 01.08.2003. In rebuttal, the management witness Lt. Col. L.K. Sharma stated on oath before this Tribunal that the workmen Ghasita Ram, Zakir Hussain, Nasim Ahmad, Habib, Hukum Singh and Surendera Kumar used to work as Mali in the Training Battalion and Kalif-ur-rehman, Rameshwar and Madan Pal Singh were working in the Sapper’s Bakery. He further stated that these nine employees were not regular employees rather they were engaged as per need on monthly salary basis, which was paid from the Regimental Fund. He further stated that the number of such Regimental Employees is 74; and all 74 have not been terminated. He also added that no new faces have been engaged in their place. In cross-examination the management witness very specifically stated that these employees who moved present application, have filed a dispute for regularization and they have been terminated before finalization of said dispute. He further stated that no prior permission was taken from this Tribunal because the employee in question were not industrial employee. The management witness stated that no written notice, mentioning reason, has been given to the employee on the eve of termination. Likewise they were not paid any compensation etc. while terminating their services.

18. Section 33 of the Act categorically states that during the pendency of any proceedings before an Authority, (which includes proceedings before a conciliation officer, a board, an arbitrator, labour court, Tribunal and/or National Tribunal) a workman would not be discharged or dismissed unless an application has been made by the employer to the Authority before which the proceeding is pending for approval of the action by the employer. There is no iota of evidence on the record that the management ever made an effort to seek permission of this Tribunal before terminating the services of the workmen, which amounts to clear contravention of provisions Section 33.

Hon’ble Bombay High Court in Vidya V. Kulkarni & another vs. Bombay Khadi & Village Industries Association

2007 LLR 800 where there was alleged contravention of Section 33, ordered for reinstatement with back wages. Hon’ble High Court while dealing with the matter of alleged contravention of Section 33(2)(b) has observed as under:

“10. It would be relevant to consider the judgment of the Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra). The Apex Court in the said case held that if there was a failure on the part of the employer to make an application under section 33 (2) (b) seeking approval to the order of termination the, in that case, the dismissal was ineffective from the date it was passed and that the employee was entitled to wages from the date of dismissal. By the said judgment, the judgment of the Supreme Court in the case of Punjab Beverages Pvt. Ltd. (supra) was overruled. The said judgment was delivered by the Constitution Bench of the Supreme Court after the matter was referred to the Constitution Bench. In this Context, the observations of the Supreme Court in para 14 and 15 of its judgment in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra) are relevant and it will be profitable to reproduce these observations. The said paras 14 and 15 reads as under:

14. Where an application is made under Section 33(2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not etc. if the authority refuses to grant approval obviously it follows that the employee continues to be in service as if the order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33 (2)(b) dismissing or discharging an employee brings an end of relationship of the employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement.

15. The view that when no application is made or the one made is withdrawn, there is no order of refusal of such application on merit and as such the order of dismissal or discharge does not become void or inoperative unless such an order is set aside under Section 33A, cannot be accepted. In our view, not making an application under Section 33(2)(b) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to Section 33(2)(b). An employer who does not make an application under Section 33(2)(b) or withdraws the one made, cannot be rewarded by relieving him of the statutory obligation created on him to make such an application. If it is so done, he will be happier or more comfortable than an employer who obeys the command of law and makes an application inviting scrutiny of the authority in the matter or granting approval of the action taken by him. Adherence to an obedience of law should be obvious and necessary in a system governed by rule of law. An employer by design can avoid to make an application after dismissing or discharging an employee or file it and withdraw before any order is passed on it, on its merits, to make a position that such order is not inoperative or void till it is set aside under Section 33A notwithstanding the contravention of Section 33(2)(b) proviso, driving the employee to have recourse to one or more proceeding by making a complaint under Section 33A or to raise another industrial dispute or to make a complaint under Section 31(1). Such an approach destroys the protection specifically and expressly given to an employee under the said proviso as against possible victimization, unfair labour practice or harassment because of pendency of industrial dispute so that an employee can be saved from hardship of unemployment”

From the observations made in the said paras, it is clear that if the authority refuses to grant approval then, in that case, a natural consequence which would emerge as a result of that would be that the employee continues to be in service as if the order of discharge or termination has never existed. The order of termination, therefore, would become complete only after the approval is granted by the authority under Section 33(2)(b). Once, therefore, the approval is not granted or is not sought in the first place would render the order of termination or discharge ineffective and will be treated as if it had never come into existence. As a natural corollary to

that, it will have to be treated as if the employee is still in service and it entitled to all the benefits.”

Thus, from the facts and circumstances of the case and in view of the observations of Hon’ble Bombay High Court, in light of Hon’ble Apex Court, it is of considered opinion that the workmen are liable to be treated to be in service for alleged contravention of proviso of Section 33 as the employers never approached this Tribunal for seeking its approval for terminating to their services.

19. It is also the case of the workmen that the management, while terminating their services, did not serve any notice or paid any notice in lieu thereof or any retrenchment compensation. The learned authorized representative of the workmen has argued that it also a case of violation of provisions of Section 25 F of the Industrial Disputes Act. In *Sohan Lal workman vs Addl. District and Sessions Judge & others* 2013 (138) FLR 763, Hon’ble Punjab & Haryana High Court has observed that a part time worker also entitled to protection of Section 25-F etc. Whereas in *Surenderanagar Panchayat and another v. Jethabhai Pitamberbhai* 2005 (107) FLR 1145 (SC) Hon’ble Apex Court came to the conclusion that the workman could be entitled for the protection of Section 25-F of the Industrial Disputes Act, 1947 provided he is successful in establishing the fact that he had been in employment with the employer for a period of 240 days uninterruptedly. It was held by the Hon’ble Supreme Court that in such cases, the scope of the enquiry before the Labour Court was confined only to 12 months preceding the date of termination to decide the question of the continuous service for the purpose of section 25-F of the Industrial Disputes Act, 1947.

In the instant case, it is specific pleading from the workmen that an industrial dispute regarding their demand for regularization of their services with the management was pending before this Tribunal and being annoyed from pendency of said industrial dispute the management of the opposite parties have terminated their services w.e.f. 01.08.2003. The management witness Lt. Col. L.K. Sharma in his examination-in-chief stated that the workmen Ghasita Ram, Zakir Hussain, Nasim Ahmad, Habib, Hukum Singh and Surendera Kumar used to work as Mali in the Training Battalion and Kalif-ur-Rehman, Rameshwar and Madan Pal Singh were working in the Sapper’s Bakery. In cross-examination he stated that these employees who moved present application, have filed a dispute for regularization and they have been terminated before finalization of said dispute; and that no written notice, mentioning reason, has been given to the employee on the eve of termination. Likewise they were not paid any compensation etc. while terminating their services.

Thus, having regard to the statements of the management given before this Tribunal and fact that an industrial dispute regarding regularization of the workmen

have been referred by the Central Government to this Tribunal vide order No. L-14012/67/2002-IR(DU) dated 05.03.2003 on submission of Failure of Conciliation Report before the Central Government by the Assistant Labour Commission (Central) goes to prove that the workmen have completed 240 days mandatory working in preceding twelve calendar months before their alleged date of termination i.e. 01.08.2003.

20. Hon'ble Allahabad High Court in State of U.P. vs. Mahendra Pal Singh & another 2012 (2) ALJ 325 while scrutinizing the validity of the award of the Labour Court found that the findings of the Labour Court were not perverse; wherein the Labour Court drawn out a finding that the workman had continuously worked for more than 240 days in calendar months prior to termination of his services; and the termination of services was without any notice and without payment of retrenchment compensation; and accordingly, Hon'ble High Court held that the relief of reinstatement with 60% of back wages, awarded by the Labour Court was justified. Hon'ble High Court in para 47-50 of its judgment, has referred decision of Hon'ble Apex Court in Krishan Singh Vs. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana) (2010) 3 SCC 637: (AIR 2010 SC (Supp) 787 as under:

"47. the appellant worked as a daily wager under the respondent from 1.6.1988. His services were terminated in December, 1993. He served a notice of demand dated 30.12.1997 on the respondent contended that his services were terminated orally without complying with the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and that he may be reinstated in service with full back wages from the date of illegal termination and he may be regularized according to the Government policy. The respondent did not respond to the demand made by the appellant and by an order dated 23.7.1999, the State Government referred the dispute under Section 10 of the Act to the Labour Court. Thereupon the Labour Court passed the award dated 18.7.2006 holding that the appellant had admittedly completed 267 days from 1.6.1988 to 30th April, 1989 and his services were terminated without any notice or notice pay and without payment of retrenchment compensation and the termination was, therefore, in violation of Section 25-F of the Act and the appellant was entitled to be reinstated in his previous post with continuity of service and 50% back wages from the date of demand notice i.e. 30.12.1997.

48. The respondent challenged the award of the Labour Court before the High Court of Punjab and Haryana, in writ petition and by order dated 9.12.2008, High Court allowed the said writ petition

and set aside the award dated 18.7.2006 of the Labour Court and directed the respondent instead to pay compensation of Rs. 50,000/- to the appellant. Aggrieved by order dated 9.12.2008 of the High Court, the appellant filed appeal before the Apex Court. By placing reliance upon earlier decision rendered by the Apex Court in the case of Harjinder Singh (supra), allowed the appeal and set aside the impugned order dated 9.12.2008 passed by the High Court and directed that the appellant will be reinstated as a daily wager with 50% back wages forthwith.

49. While dealing with the question of discretionary powers of the Labour Court, in para 17 of the decision, Hon'ble Apex Court has observed as under:

"17. Wide discretion is, therefore, vested in the Labour Court while adjudicating an industrial dispute relating to the discharge or dismissal of a workman and if the Labour Court has exercised its jurisdiction in the facts and circumstances of the case to direct reinstatement of a workman with 50% back wages taking into consideration the pleadings of the parties and the evidence on record, the High Court in exercise of its power under Articles 226 and 227 of the Constitution of India will not interfere with the same, except on well settled principles laid down by this Court for a writ of certiorari against an order passed by a court or a tribunal."

Moreover, Hon'ble Apex Court in Bhuvanesh Kumar Dwivedi vs M/s. Hindalco Industries Ltd. 2014(142) FLR 20; wherein it awarded reinstatement with full back wages to the appellant while dealing with the case of alleged contravention of Section 6-N of the U.P. I.D. Act which is in similar to Section 25 F of the I.D. Act has observed as under:

"28. Section 6-N of the U.P. I.D. Act which is in pari materia to s. 25 of the I.D. Act reads thus:

"6-N. Condition precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until, -

- (a)
- (b)
- (c)

Evidently, the above said mandatory procedure has not been followed in the present case. Further, it has been held by this Court in the case of Anoop Sharma vs. Executive Engineer, Public Health Division No. 1, Panipat, as under:

13.....no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of the section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. This Court has repeatedly held that section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity..... This Court has used different expressions for describing the consequences of terminating a workman's service/employment/engagement by way of retrenchment without complying with the mandate of section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of section 25-F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated."

Therefore, in the light of the law provided in the I.D. Act and its State counterpart through the U.P.I.D. Act and also on the basis of the legal principle laid down by this Court, we hold that the termination of services of the appellant was illegal and void ab initio.

29. Therefore, in the Labour Court was correct on factual evidence on record and legal principles laid down by this Court in catena of cases in holding that the appellant is entitled to reinstatement with all consequential benefits."

21. Thus, in view of the facts and circumstances of the case, discussions made hereinabove and law relied on, it is established that the workmen viz. Ghasita Ram, Zakir Hussain, Nasim Ahmad, Habib, Hukum Singh and Surendera Kumar used to work as Mali in the Training Battalion and Kalif-ur-Rehman, Rameshwar and Madan Pal Singh have been working with the opposite party management and their services have been terminated in violation of provisions of Section 33 of the Act, during pendency of an industrial dispute No. 38/2003 vide reference No. L-14012/67/2002-IR(DU) dated 05.03.2003

between same workmen and the management of Bengal Engineers Group & Centre; and also that the services of the workmen were terminated without complying with the mandatory provisions of Section 25 F of the Industrial Disputes Act, 1947; therefore, I come to the conclusion that the workmen under dispute are entitled for reinstatement with all consequential benefits including full back wages within 08 weeks of publication of the award, failing which; the back wages shall carry simple interest @ 6% per annum.

22. Award as above.

LUCKNOW

23rd December, 2015

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 6 जनवरी, 2016

का.आ. 76.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार राजस्थान परमाणु बिजलीघर यूनिट, कोटा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 44/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/01/2016 को प्राप्त हुआ था।

[सं. एल-42011/59/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 6th January, 2016

S.O. 76.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 44/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Rajasthan Parmanu Bijlighar Unit, Kota and their workmen, which was received by the Central Government on 05/01/2016.

[No. L-42011/59/2013-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, JAIPUR**

BHARAT PANDEY, Presiding Officer

I.D. 44/2013

Reference No. L-42011/59/2013-IR(DU)
dated : 1.8.2013

The President

Rajasthan Anushakti Pariyojna Karamchari Sangh
(INTUC), INTUC Office, Pratap Circle,
PO Bhabhanagar, Rawatbhata, Via Kota,
Kota (Rajasthan) – 323307.

V/s.

Site Executive Director
Rajasthan Parmanu Bijlighar Unit
Anushakti, Kota (Rajasthan).

AWARD

30.11.2015

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“क्या अप्रार्थी प्रबंधन द्वारा प्रार्थी यूनियन की सलगन सूची में दर्शाये गए चिकित्सालय में कार्यरत कर्मचारियों को रिडिप्लोमेंट/अप्रोडेशन एवं प्रमोशन नहीं दिए जाने की कार्यवाही वैध व न्यायोचित है? यदि नहीं तो यूनियन द्वारा सलगन सूची में दर्शाये गए कर्मचारी किस राहत के व कब से पाने के हकदार है?”

2. Pursuant to the receipt of the reference order, registered notices were issued to the parties as per the order of the tribunal dated 3.9.2013 fixing 16.1.2014 for filing statement of claim. Applicant was served for 16.1.2014 & acknowledgement has been received back which is available on record. On 16.1.2014 Sh. J.C. Gupta, Advocate appeared for the applicant & alleged to file claim & authority on behalf of applicant on next date 7.4.2014. Sh. Rajendra Gupta, Advocate appeared for opposite party & alleged that authority of Sh. Dharmendra Jain, Advocate shall be filed on the date fixed 7.4.2014. On 7.4.2014 presiding officer was on leave & none appeared for applicant. On behalf of opposite party Sh. Rajendra Gupta, Advocate appeared with memo of appearance of Sh. Dharmendra Jain. Next date 18.6.2014 was fixed for filing statement of claim by the applicant. On 18.6.2014, 25.8.2014 & 11.11.2014 successive dates fixed for filing statement of claim applicant side neither appeared nor claim was filed although on all these three dates proceedings of filing claim was adjourned by tribunal on its own motion & successive dates were fixed for filing statement of claim. On 11.11.2014 information by Sh. J.C. Gupta, Learned Advocate was given to the tribunal that the applicant has engaged another counsel for filing statement of claim. On 11.11.2014 next date 19.1.2015 was fixed with direction that claim by the applicant be filed on 19.1.2015 otherwise further opportunity for filing claim will end.

3. On 19.1.2015 Sh. Kuldeep Aswal, Advocate appeared on behalf of applicant & filed authority in the court requesting further time for filing statement of claim. Opposite party was absent on 19.1.2015 & also on past dates 11.11.2014 & 25.8.2014. On 19.1.2015, 13.4.2015 next date fixed for filing statement of claim. On 13.4.2015 presiding officer was on leave & applicant was absent. Sh. Rajendra Gupta, Advocate was present on behalf of

opposite party. 29.6.2015 was next date fixed for filing statement of claim by applicant. On 29.6.2015 & next dates 21.9.2015, 16.11.2015 & 30.11.2015 applicant did not appear & statement of claim was also not filed. On 21.9.2015 & 16.11.2015 Sh. Rajendra Gupta, Advocate was present for opposite party. On 30.11.2015 none was present on behalf of opposite party.

4. It shall appear from perusal of the proceedings on different dates as indicate above 11 opportunities were given to the applicant for filing statement of claim between 3.9.2013 & 30.11.2015. Applicant was served for the date fixed 16.1.2014 but no attempt has been made by him for filing statement of claim till 30.11.2015. Looking into the fact as indicated above it is clear that applicant does not appear to be interested to pursue the case further hence, opportunity for filing statement of claim was closed by the tribunal on 30.11.2015.

5. It is pertinent to note that reference order dated 1.8.2013 was sent by Ministry to applicant with direction to file statement of claim within 15 days from the date of receipt of reference. Applicant has neither filed statement of claim on the direction of Ministry nor on notice & knowledge of the proceeding pending before the tribunal. It appears that applicant is not interested & willing in submitting the claim for adjudication. In the circumstances & in the absence of material evidence brought on record, tribunal is unable to record the finding on the issues referred to it on merit. Accordingly, “No Claim Award” is passed in this matter. The reference under adjudication is answered accordingly.

6. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 6 जनवरी, 2016

का.आ. 77.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार राजस्थान परमाणु बिजलीघर यूनिट, कोटा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 45/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/01/2016 को प्राप्त हुआ था।

[सं. एल-42011/58/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 6th January, 2016

S.O. 77.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 45/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Rajasthan Parmanu Bijlighar Unit,

Kota and their workmen, which was received by the Central Government on 05/01/2016.

[No. L-42011/58/2013-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, JAIPUR**

BHARAT PANDEY, Presiding Officer

I.D. 45/2013

Reference No. L-42011/58/2013-IR(DU)
dated : 1.8.2013

The President

Rajasthan Anushakti Pariyojna Karamchhari Sangh
(INTUC), INTUC Office, Pratap Circle,
PO Bhabhanagar, Rawatbhata, Via Kota,
Kota (Rajasthan) – 323307.

V/s.

Site Executive Director
Rajasthan Parmanu Bijlighar Unit
Anushakti, Kota (Rajasthan).

AWARD

30.11.2015

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“क्या अप्रार्थी प्रबंधन द्वारा प्रार्थी यूनियन की सलंगन सूची में दर्शाये गए चिकित्सालय में कार्यरत मेल/फीमेल नर्स A को छटे वेतन आयोग के अनुसार वेतन निर्धारित नहीं करने की कार्यवाही वैध व न्यायोचित है? यदि नहीं तो यूनियन द्वारा सलंगन सूची में दर्शाये गए कर्मचारी किस राहत के व कब से पाने के हकदार है? ”

2. Pursuant to the receipt of the reference order, registered notices were issued to the parties as per the order of the tribunal dated 9.9.2013 fixing 16.1.2014 for filing statement of claim. On 16.1.2014 Sh. J.C. Gupta, Advocate appeared for the applicant & alleged to file claim & authority on behalf of applicant on next date 7.4.2014. Sh. Rajendra Gupta, Advocate appeared for opposite party & alleged that authority of Sh. Dharmendra Jain, Advocate shall be filed on the date fixed 7.4.2014. On 7.4.2014 presiding officer was on leave & none appeared for applicant. On behalf of opposite party Sh. Rajendra Gupta, Advocate appeared with memo of appearance of Sh. Dharmendra Jain. Next date 18.6.2014 was fixed for filing statement of claim by the applicant. On 18.6.2014, 25.8.2014 & 11.11.2014 successive dates fixed for filing statement of claim applicant side neither appeared nor claim was filed although on all these three dates proceedings of

filing claim was adjourned by tribunal on its own motion & successive dates were fixed for filing statement of claim. On 11.11.2014 information by Sh. J.C. Gupta, learned Advocate was given to the tribunal that the applicant has engaged another counsel for filing statement of claim. On 11.11.2014 next date 19.1.2015 was fixed with direction that claim by the applicant be filed on 19.1.2015 otherwise further opportunity for filing claim will end.

3. On 19.1.2015 Sh. Kuldeep Aswal, Advocate appeared on behalf of applicant & filed authority in the court requesting further time for filing statement of claim. Opposite party was absent on 19.1.2015 & also on past dates 11.11.2014 & 25.8.2014. On 19.1.2015, 13.4.2015 was next date fixed for filing statement of claim. On 13.4.2015 presiding officer was on leave & applicant was absent. Sh. Rajendra Gupta, Advocate was present on behalf of opposite party. 29.6.2015 was next date fixed for filing statement of claim by applicant. On 29.6.2015 & next dates 21.9.2015, 16.11.2015 & 30.11.2015 applicant did not appear & statement of claim was also not filed. On 21.9.2015 & 16.11.2015 Sh. Rajendra Gupta, Advocate was present for opposite party. On 30.11.2015 none was present on behalf of opposite party.

4. It shall appear from perusal of the proceedings on different dates as indicate above 11 opportunities were given to the applicant for filing statement of claim between 3.9.2013 & 30.11.2015. Applicant was served for the date fixed 16.1.2014 but no attempt has been made by him for filing statement of claim till 30.11.2015. Looking into the fact as indicated above it is clear that applicant does not appear to be interested to pursue the case further hence, opportunity for filing statement of claim was closed by the tribunal on 30.11.2015.

5. It is pertinent to note that reference order dated 1.8.2013 was sent by Ministry to applicant with direction to file statement of claim within 15 days from the date of receipt of reference. Applicant has neither filed statement of claim on the direction of Ministry nor on notice & knowledge of the proceeding pending before the tribunal. It appears that applicant is not interested & willing in submitting the claim for adjudication. In the circumstances & in the absence of material evidence brought on record, tribunal is unable to record the finding on the issues referred to it on merit. Accordingly, “No Claim Award” is passed in this matter. The reference under adjudication is answered accordingly.

6. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 8 जनवरी, 2016

का.आ. 78.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स लाइम स्टोन माइन ऑनर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके

कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 35/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/01/2016 को प्राप्त हुआ था।

[सं. एल-29011/49/2013-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 8th January, 2016

S.O. 78.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/2014) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Lime Stone Mine Owner and their workman, which was received by the Central Government on 05/01/2016.

[No. L-29011/49/2013-IR(M)]

NAVEEN KAPOOR, Under Secy.

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 35/2014

भरत पाण्डेय, पीठासीन अधिकारी

रेफरेन्स नं. L-29011/49/2013-IR(M) दिनांक 17/04/2014

General Secretary,
Rashtriya Mazdoor Sangh,
Ramganj Mandi, Dist.- Kota
(Rajasthan)

V/s.

Sh. Abdul Mujib,
Lime Stone Mine Owner, Arolia,
Mukam Jheeri Mohalla,
Basement, Jhalawad

प्रार्थी की तरफ से : श्री रामगोपाल गुप्ता – प्रतिनिधि

अप्रार्थी की तरफ से : श्री छोटूलाल – प्रतिनिधि

: पंचाट :

दिनांक : 09.11. 2015

1. केन्द्रीय सरकार द्वारा औद्योगिक विवाद अधिनियम, 1947 की धारा 10 उपधारा 1 खण्ड (घ) के अन्तर्गत दिनांक 17.04.2014 के आदेश से प्रेषित विवाद के आधार पर यह प्रकरण न्यायनिर्णयन हेतु संस्थित है। केन्द्रीय सरकार द्वारा प्रेषित विवाद निम्नवत् है :-

2. “Whether 5 point charter of demand of Rashtriya Mazdoor Sangh, Ramganj Mandi from the

management of Sh. Abdul Mujib, Lime Stone Mine Owner, Arolia, Jhalawad raised vide their letter dated 30.02.2013 (copy enclosed) is legal and justified? What relief the union is entitled to?”

3. स्टेटमेंट ऑफ क्लेम में दिये गये तथ्यों के अनुसार संक्षिप्ततः याची का कथन है कि प्रार्थी श्रमिक पक्ष ने विपक्षी नियोजन पक्ष को एक मांग पत्र दिनांक 18.1.2013 को प्रेषित कर श्रमिक कर्मचारियों की रेगुलर जायज मांग प्रस्तुत की जिसमें दिनांक 1.1.2013 से कुली और बेलदारों को 160 रु. प्रतिदिन की दर से भारत सरकार द्वारा निर्धारित मजदूरी दिये जाने, जमीन से नीचे कार्य करने वाले श्रमिकों को 190 रु. प्रति 100 वर्गफुट कटाई दर दिये जाने, संस्थान में कार्यरत श्रमिक जो 5500 रु. मासिक वेतन पा रहे हैं उन्हें 125 रु. वार्षिक वेतनवृद्धि और 5500 रु. से अधिक वेतन पाने वाले को 150 रु. वार्षिक वेतनवृद्धि की दर से भुगतान करने, व अन्य श्रमिकों के आश्रित बच्चों को छात्रवृत्ति, श्रमिकों को नियत करने और पीएल तथा सीएल दिये जाने की मांग की। नियोजक पक्ष ने उक्त मांगों पर कोई ध्यान नहीं दिया अतः दिनांक 30.2.2013 को मांग पत्र माननीय सहायक श्रम आयुक्त को प्रेषित की गयी।

4. सहायक श्रम आयुक्त ने उभयपक्ष को सुनवाई के लिए आहूत किया। सुनवाई के कई मौके दिये गये। नियोजक पक्ष द्वारा समझौता वार्ता में भाग न लेने और कोई रुचि न लेने के कारण दिनांक 30.7.2013 को सहायक श्रम आयुक्त ने वार्ता विफल होने की सूचना केन्द्र सरकार को भेजी जिसके परिणामस्वरूप रेफरेन्स प्रेषित किया गया।

5. आगे याचिका में कहा गया है कि उक्त मांग पत्र के आधार पर स्टेटमेंट ऑफ क्लेम प्रस्तुत किया जा रहा है और श्रमिक मांग पत्र के अनुसार मांगी गयी धनराशि पाने के हकदार है। श्रमिक पक्ष द्वारा विपक्ष से विधिवत कई बार निवेदन किया जा चुका है लेकिन विपक्ष मालाफाईड इन्टेन्शन से श्रमिकों राहत देने से बचता रहा है अतः प्रार्थी पक्ष ने प्रार्थना की है कि रेफरेन्स से सम्बन्धित मांग पत्र को स्वीकार किया जाय और दिनांक 1.1.2013 से नियोजक पक्ष से निर्धारित समयावधि में बढी हुई मजदूरी, वेतनवृद्धि दिलाये जाने कृपा की जाय।

6. दिनांक 22.7.14 को याची पक्ष की स्टेटमेंट ऑफ क्लेम पंजिकृत डाक से प्राप्त हुई। दिनांक 8.12.2014 को विपक्ष के विरुद्ध तामिला के बावजूद वादोत्तर न प्रस्तुत करने पर एकपक्षीय कार्यवाही का आदेश पारित किया गया और पत्रावली दिनांक 11.2.2015 को याची की एकपक्षीय साक्ष्य के लिए नियत की गयी। दिनांक 8.12.2014 को ही याची ने शपथ-पत्र एकपक्षीय साक्ष्य के रूप में प्रस्तुत किया।

7. दिनांक 11.2.2015 को याची पक्ष को आदिष्ट किया गया कि एकपक्षीय साक्ष्य में याची द्वारा दिनांक 8.12.2014 को प्रस्तुत शपथ-पत्र शपथ-कमिशनर द्वारा अथवा नोटरी द्वारा सत्यापित नहीं है अतः अगली तिथि दिनांक 19.3.2015 को सत्यापित शपथ-पत्र प्रस्तुत किया जाय। दिनांक 19.3.2015 को याची पक्ष द्वारा साक्ष्य में शपथ-पत्र प्रस्तुत करने के लिए समय की मांग की गयी जो स्वीकार की गयी और दिनांक 18.5.2015 एकपक्षीय साक्ष्य के लिए तिथि नियत की गयी।

8. दिनांक 23.3.2015 को डाक द्वारा विपक्षी की एकपक्षीय आदेश को निरस्त करने की आवेदन प्राप्त हुई जिसे पत्रावली पर रखा गया। दिनांक 18.5.2015 को उभयपक्ष अनुपस्थित थे अतः न्यायाधिकरण द्वारा न्यायहित में कार्यवाही मुत्तवी की गयी और 17.8.15 को विपक्षी की एकपक्षीय आदेश निरस्त करने की आवेदन सुनवाई हेतु नियत की गयी। दिनांक 17.8.15 को याची पक्ष उपस्थित एवं विपक्ष अनुपस्थित था। याची पक्ष को एकपक्षीय कार्यवाही के आदेश को निरस्त करने की विपक्षी की आवेदन की नकल दी गयी और दिनांक 9.11.15 तिथि आवेदन निस्तारण हेतु नियत की गयी।

9. दिनांक 9.11.15 को उभयपक्ष की तरफ से लिखित समझौता-पत्र आवेदन के साथ प्रस्तुत की गयी तथा आवेदन में प्रार्थना की गयी कि समझौते को पत्रावली पर लेकर उसे तस्दीक करते हुए अवार्ड पारित किया जाय। उभयपक्ष द्वारा प्रस्तुत आवेदन तथा समझौता-पत्र निम्न प्रकार है :-

**न्यायालय केन्द्रीय सरकार औद्योगिक न्यायाधिकरण एवं
श्रम न्यायालय, जयपुर**

विद्याधर नगर, जयपुर, राजस्थान

औद्योगिक विवाद संख्या- 35/2014

राष्ट्रीय मजदूर संघ इंटक रामगंज मण्डी जिला कोटा - श्रमिक पक्ष

बनाम

अब्दुल मुजीब पुत्र श्री पीर खान, खान मालिक, आरोलिया जिला झालावाड़

औद्योगिक विवाद प्रार्थना पत्र

मान्यवर,

उपरोक्त उनवान के विवाद में आज तारीख पेशी नियत है। उपरोक्त प्रकरण में श्रमिक और प्रबन्धन पक्ष में लोक अदालत की भावना और आपसी समझाइश से समझौता हो गया है, जो फॉर्म एच में संलग्न है।

अतः प्रार्थना है कि उक्त प्रकरण में समझौते को रिकॉर्ड पर लेकर उक्त समझौते को तस्दीक करते हुए अवार्ड पारित करने की कृपा करें।

स्थान - जयपुर

प्रार्थी हस्ताक्षर अपठनीय

दिनांक : 09.11.2015

हस्ताक्षर अपठनीय 1. राष्ट्रीय मजदूर संघ इंटक रामगंजमण्डी

(पहचान कर्ता) द्वारा मंत्री रामगोपाल गुप्ता - श्रमिक पक्ष

हस्ताक्षर अपठनीय

2. मैसर्स अब्दुल मुजीब पुत्र पीर खान, खान मालिक, आरोलिया जिला झालावाड़, जरिये अधिकृत प्रतिनिधि छोटू लाल प्रबन्धक माइन्स।

हस्ताक्षर अपठनीय

(पहचान कर्ता)

submitted

हस्ताक्षर अपठनीय

समझौता-पत्र

फॉर्म-“एच”

: देखिए नियम 58 :

आज दिनांक 05.11.2015 को औद्योगिक विवाद अधिनियम 1947 के प्रावधानों के अन्तर्गत समझौते की प्रक्रिया के दौरान, राष्ट्रीय मजदूर संघ : इंटक : रामगंजमण्डी एवं मैसर्स अब्दुल मुजीब पुत्र श्री हाजी पीर खान, खान मालिक आरोलिया झालावाड़ जिला कोटा के मध्य समझौता निम्न प्रकार से सम्पन्न हुआ।

प्रबन्धक प्रतिनिधि :-

श्री छोटूलाल अधिकृत प्रतिनिधि,
अब्दुल मुजीब पुत्र श्री हाजी पीर खान,
खान मालिक, आरोलिया झालावाड़

यूनियन प्रतिनिधि :-

श्री रामगोपाल गुप्ता - मंत्री
राष्ट्रीय मजदूर संघ : इंटक : रामगंजमण्डी

विवाद का संक्षिप्त विवरण

यह कि राष्ट्रीय मजदूर संघ : इंटक : रामगंजमण्डी द्वारा प्रबन्धन मैसर्स अब्दुल मुजीब पुत्र श्री हाजी पीर खान, खान मालिक आरोलिया झालावाड़ को श्रमिकों की ओर से प्रेषित मांग पत्र दिनांक 01.03.2013 के सन्दर्भ में रेफरेन्स एल-29011/50/2013 आई आर एम दिनांक 21.04.2014 पर संस्थित प्रकरण संख्या 35/2014 केन्द्रीय औद्योगिक न्यायाधिकरण विद्याधर नगर जयपुर राजस्थान के सन्दर्भ में वित्तिय वर्ष 01.01.2013 से 31.03.2014 के लिए प्रबन्धक की खान में कार्यरत कर्मकारों, कर्मचारियों, श्रमिकों के लिए निम्न प्रकार समझौता हो गया है, उक्त विवाद में दोनों पक्षों में विचार विमर्श के पश्चात् समझौते के चरण निम्न अंकित हैं-

1. यह कि उभयपक्ष सहमत है कि केन्द्रीय औद्योगिक न्यायाधिकरण विद्याधर नगर, जयपुर, राजस्थान में लम्बित प्रकरण को लोक अदालत की भावना से नो डिस्पूट अवार्ड के रूप में पारित करावेंगे।

2. यह कि प्रबन्धन की ओर से श्रमिक एवं कर्मचारियों को, कुली बेलदार को 154 रु. प्रतिदिन तथा भारत सरकार द्वारा घोषित परिवर्तनशील महंगाई भत्ता, बिलो ग्राउण्ड का भुगतान पृथक से किया जावेगा, कर्मकार द्वारा 100 फीट कारीगर को 183 रु. प्रतिदिन रेट एवं 100 फीट अधिक काटने वाले को 185 रु. की अतिरिक्त रेट प्रदान की जावेगी, भारत सरकार द्वारा घोषित परिवर्तनशील महंगाई भत्ता प्रतिदिन दिया जावेगा, जिन कर्मचारियों को 6,000 रु. प्रतिमाह वेतन तथा अधिक पाने वालों को 150 रु. अतिरिक्त एवं 6,000 रु. से कम वेतन पाने वालों को 125 रु. प्रतिदिन पृथक से भुगतान किया जावेगा, श्रमिकों एवं कर्मचारियों के आश्रित बच्चों को वर्ष की परीक्षा में 60 प्रतिशत व उससे अधिक अंक प्राप्त करने वालों को नियमानुसार छात्रवृत्ति दी जावेगी,

संस्थान में कार्यरत श्रमिक व कर्मचारियों जिन्होंने 31.12.2015 तक दो साल की सेवायें पूरी कर ली हैं, उनको स्थायी किया जावेगा एवं 20 पीएल अवकाश एवं 15 सीएल अवकाश प्रदान किया जावेगा। उपरोक्त समझौते की पालना 01.01.2016 से अथवा न्यायालय अवार्ड पारित होने से दो माह के अन्दर-अन्दर पूरा किया जावेगा।

3. यह कि दोनों पक्षों ने स्वीकार किया कि समझौते के अनुरूप समस्त भुगतान यूनियन प्रतिनिधियों के समक्ष कर दिया जावेगा।

4. यह कि इस विवाद में अन्य कोई बिन्दु शेष नहीं रहा है।

हस्ताक्षर नियोजक पक्ष खदान मालिक

हस्ताक्षर यूनियन प्रतिनिधि

हस्ताक्षर अपठनीय

हस्ताक्षर अपठनीय

हस्ताक्षर अपठनीय

(पहचान कर्ता)

9/11/2015

श्री छोटलाल अधिकृत प्रतिनिधि

राष्ट्रीय मजदूर संघ इंटक रामगंजमण्डी

अब्दुल मुजीब पुत्र श्री हाजी पीर खान,

द्वारा मंत्री रामगोपाल गुप्ता – श्रमिक पक्ष

खान मालिक आरोलिया झालावाड

साक्षी : - 1 बद्रीलाल

साक्षी : - 2 हस्ताक्षर अपठनीय

Identified by

हस्ताक्षर अपठनीय

9/11/2015

10. दिनांक 9.11.15 को न्यायाधिकरण द्वारा निम्न आदेश पारित किया गया :-

09-11-2015

पेश हुआ। पुकार की गयी। याचित पक्ष के विद्वान प्रतिनिधि श्री सतीश पचौरी, उपस्थित है। विपक्ष की तरफ से श्री सुनील कुमार जैन, एडवोकेट ने अधिकार-पत्र प्रस्तुत किया जिसे शामिल मिसिल किया गया। अधिकार पत्र के साथ प्रबन्धक श्री छोटलाल की आधार कार्ड की फोटो प्रति प्रस्तुत है।

विपक्ष की तरफ से आवेदन दिनांकित 16.3.15 पर उभयपक्ष के विद्वान प्रतिनिधि को सुना। विपक्ष के विरुद्ध एकपक्षीय आदेश दिनांक 08.12.2014 को निरस्त करने की आवेदन विपक्ष ने डाक से भेजी थी। आज आवेदन पर याची पक्ष के विद्वान प्रतिनिधि द्वारा अनापत्ति अंकित की गयी अतः आवेदन स्वीकार की जाती है। विपक्ष के विरुद्ध एकपक्षीय आदेश दिनांक 08.12.2014 निरस्त किया जाता है।

उभयपक्ष की आवेदन समझौते को पत्रावली पर लिये जाने तथा समझौते को तसदीक कर एवार्ड पारित करने की प्रार्थना के साथ प्रस्तुत है। आवेदन पर उभयपक्ष को सुना। उभयपक्ष के विद्वान प्रतिनिधि ने बहस की है कि पक्षकार उपस्थित नहीं है परन्तु उन्होंने अधिकृत किया है अतः समझौता तसदीक किया जा सकता है। उक्त आधार पर आवेदन स्वीकार की जाती है।

समझौते पर उभयपक्ष के विद्वान प्रतिनिधि को सुना। समझौते के सम्बन्ध में पक्षकारों के विद्वान प्रतिनिधि ने बयान किया कि समझौता पक्षकारों को स्वेच्छया स्वीकार है, अतः इस प्रकरण को पक्षकारों द्वारा प्रस्तुत समझौते के

आधार पर निस्तारित किया जाता है। समझौते पर गवाहों के हस्ताक्षर हैं। समझौता दिनांकित 5.11.2015 पंचाट का अंश होगा जो न्यायाधिकरण में आज दिनांक 09.11.2015 को प्रस्तुत किया गया।

भरत पाण्डेय, पीठासीन अधिकारी

नई दिल्ली, 8 जनवरी, 2016

का.आ. 79.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स अवीवा लाईफ इंश्योरेंस कं. इंडिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, एरनाकुलम के पंचाट (संदर्भ संख्या 27/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/01/2016 को प्राप्त हुआ था।

[सं. एल-17011/10/2013-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 8th January, 2016

S.O. 79.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 27/2014) of the Central Government Industrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Aviva Life Insurance Co. India Ltd. and their workman, which was received by the Central Government on 05/01/2016.

[No. L-17011/10/2013-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ERNAKULAM**

Present:

Shri.K. Sasidharan, B.Sc., LLB, Presiding Officer

(Tuesday the 22nd day of December, 2015/
01st Pausa, 1937)

ID 27/2014

Union

: 1. The General Secretary,
New Generation Banks &
Insurance Staff Association
(CITU),
Maruthi Vilas,
Canon Shed Road, Kochi
KOCHI (KERALA) – 682011

By Adv. Shri Renil Anto Kandamkulathy

Additional Party : 2. Smt. Vinidha Manu, W/o
Manu Mohan, “Aradhana”,

Engineering College P.O.,
Thrissur.
(Impleaded as Workman No. 2
on 21.12.2015 vide Order dated
21.12.2015 in I.A. No.158/2015)

By Adv. Shri Sam Isaac Pothiyil

Management : The Chief Executive Officer,
Aviva Life Insurance Co. India
Ltd., DLF Course Road, Gurgaon,
New Delhi.

By Adv. Shri Saji Isaac K.J

This case coming up for final hearing on 21.12.2015
and this Tribunal-cum-Labour Court on 22.12.2015 passed
the following:

AWARD

In exercise of the powers conferred by clause (d) of
sub-section(1) and sub-section (2A) of Section 10 of
the Industrial Disputes Act, 1947 (14 of 1947), the
Government of India/Ministry of Labour vide its Order
No-L-17011/10/2013-IR(M) dated 31.03.2014 referred the
industrial dispute scheduled thereunder for adjudication
to this tribunal.

2. The dispute is:

“Whether the action of the management of Aviva
Life Insurance Co. India in imposing suspension on
Smt. Vinitha Manu and also not paying benefits like
subsistence allowance to her during the period of
suspension are justified? If not, to what relief she is
entitled?”

3. After receiving the reference Order No.L-17011/10/
2013-IR(M) dated 31.03.2014, summons was issued to the
parties to appear and answer all the material questions
relating to this dispute and to produce all necessary
documents to substantiate their contentions. On receipt
of the summons the union entered appearance through
counsel and filed claim statement to the effect that Smt.
Vinidha Manu is a workman as defined under Section 2(s)
of the Industrial Disputes Act, 1947 and she was not
working in the managerial or supervisory capacity under
the management. The union has stated that the
management suspended her from employment without
following the procedures for initiating disciplinary
proceedings. Therefore, the union has stated that the
management denied employment to the workman and has
not paid any allowance to her. According to the union the
workman is entitled to be reinstated with full back wages,
continuity of service and other incidental benefits thereof.

4. The management disputed the claim of the union
and contended that Smt. Vinidha Manu is not a workman
as defined under Section 2(s) of the Industrial Disputes
Act, 1947 and hence this tribunal has no jurisdiction to
entertain the dispute. They have stated that the duties,

responsibilities and obligations assigned to the workman
reveal that she was employed in a managerial capacity
and hence this tribunal has no jurisdiction to decide the
dispute involved. The management has stated that on
21.08.2012 the workman along with other employees
belonging to CITU union entered the Ernakulam Office of
the company and obstructed other employees from doing
the work. Their action disrupted the functioning of the
office of the management company. In this regard the
management lodged a complaint and FIR No.2256/2012
was registered before the Ernakulam Central police station.
Other criminal cases such as Crime No.1634/2011 of
Thrikkakara Police Station, Crime No.945/2011 of Ernakulam
Town North Police Station and Crime No.405/2013 of
Koipuram Police Station are pending against the workman
involved in this dispute. The order of appointment issued
to the workman reserves the right to the management to
terminate her services if found guilty of misconduct. The
action of the management in terminating her services is
perfectly legal, just and proper. They have not issued the
termination letter due to the pendency of these cases.
The management has requested to dismiss the claim of
the workman.

5. After filing written statement the matter was posted
for filing rejoinder by the union. They have not filed
rejoinder. Thereafter the matter was posted for evidence.
In the meantime, the affected workman filed IA No.158/
2015 seeking permission to implead her as an additional
party in this proceeding. Since Smt. Vinidha Manu is the
affected person in the dispute involved, her request to get
herself impleaded as a party in the proceeding was allowed.

6. While so the learned counsel for the union remained
absent and there was no representation on behalf of the
union. Hence the union was called absent and set ex-
parte.

7. The affected workman, who is the additional party
in this proceeding viz., Smt Vinidha Manu filed a memo to
the effect that the dispute involved in this matter is settled
between her and the management and that she is not
seeking any relief against the management. She has stated
that she is not interested to proceed with this matter and
hence requested to drop this proceedings.

8. In view of the memo filed by the affected workman
i.e., Smt. Vinidha Manu to the effect that the matter has
been settled between her and the management, it is evident
that there is no industrial dispute that remains to be
adjudicated by this tribunal. Therefore the reference is
answered to the effect that there is no subsisting industrial
dispute that remains for adjudication in this reference.

The award will come into force one month after its
publication in the Official Gazette.

SASIDHARAN K., Presiding Officer

APPENDIX

- NIL

नई दिल्ली, 8 जनवरी, 2016

का.आ. 80.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स अर्जुन सिक्कूरिटी सर्विसेज के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 14/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/01/2016 को प्राप्त हुआ था।

[सं. एल-30012/24/2015-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 8th January, 2016

S.O. 80.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 14/2015) of the Central Government Industrial Tribunal/Labour Court-1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Arjuna Security Services and their workman, which was received by the Central Government on 05/01/2016.

[No. L-30012/24/2015-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

**BEFORE SHRI SURENDRA PRAKASH SINGH,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH**

Case No. ID No.14 of 2015

Reference No. L-30012/24/2015-IR(M) dated 25.08.2015

Sh. Balbir Singh son of Shri Tika Ram,
resident of Vill & PO-Balla,
Karnal (Haryana).

...Workman

Versus

M/s. Arjuna Security Services,
Panipat Petro Marketing Complex,
IOCL, Panipat Refinery,
Panipat (Haryana)

...Respondent

Appearances

For the Workman : None

For the Management : None

AWARD

Passed on:- 29.12.2015

Government of India Ministry of Labour vide notification No. L-30012/24/2015-IR(M) dated 25.08.2015 has referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of Arjuna Security Services in terminating the services of the workman is legal and justified? If not, what relief the workman is entitled to and from which date?”

2. Case repeatedly called. None appeared for the parties. Workman also did not put up appearance nor filed any claim statement despite three opportunities. It appears that the workman is not interested to pursue the present reference. In view of the above the present reference is disposed off for want of prosecution.

3. Reference is disposed off accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh
29.12.2015

S. P. SINGH, Presiding Officer